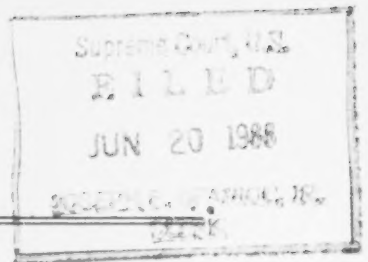


87-2082 1



No. 87-.....

In the Supreme Court
OF THE
United States

OCTOBER TERM 1987

MACARTHUR COMPANY and WESTERN
MACARTHUR COMPANY,
Petitioners,

VS.

JOHNS-MANVILLE CORPORATION,
MANVILLE CORPORATION, et al.,
Respondents.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Second Circuit**

PETITION FOR WRIT OF CERTIORARI

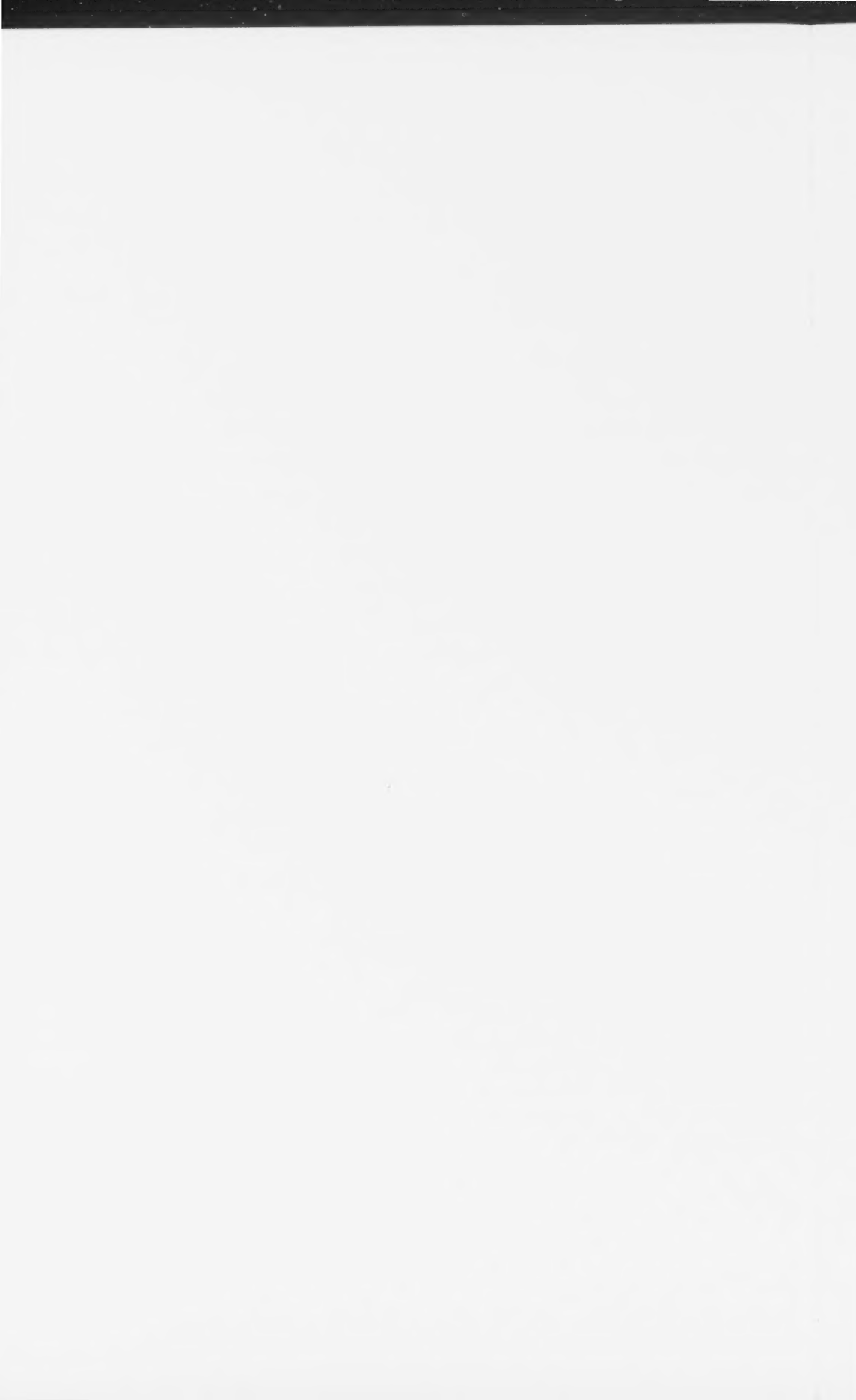
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QUESTIONS PRESENTED

1. Does a bankruptcy court have jurisdiction to enjoin permanently a nondebtor from making its independent contractual claims against nondebtor insurance companies under a vendor endorsement to a debtor's insurance policy?

2. Does a bankruptcy court have jurisdiction to authorize a debtor to extinguish the contractual claims of a nondebtor against another nondebtor without giving the complaining nondebtor priority over general unsecured creditors?

3. May a bankruptcy court determine a nondebtor's state law rights in a summary proceeding and without applying state law?

LIST OF PARTIES AND RULE 28.1 LIST

The parties to the proceedings below were the petitioners MacArthur Company and Western MacArthur Company and the respondents Johns-Manville Corporation, Manville Corporation, Manville International Corporation, Manville Export Corporation, Johns-Manville International Corporation, Manville Sales Corporation, f/k/a Johns-Manville Sales Corporation, successor by merger to Manville Buildings Materials Corporation, Manville Products Corporation and Manville Service Corporation, Manville International Canada, Inc., Manville Canada, Inc., Manville Investment Corporation, Manville Properties Corporation, Allan-Deane Corporation, Ken-Caryl Ranch Corporation, Johns-Manville Idaho, Manville Canada Service Inc., and Sunbelt Contractors, Inc.

Pursuant to Rule 28.1, petitioner MacArthur Company, a Minnesota corporation, is the parent of petitioner Western MacArthur Company, a California corporation. Other subsidiaries of MacArthur Company are Milwaukee Insulation Company, a Wisconsin corporation; Energy Panel Structures, Inc., a Minnesota corporation; and Poly-Fab, Inc., a Minnesota corporation. The affiliate of MacArthur Company is Dakota Insulation, Inc., a North Dakota corporation.

TABLE OF CONTENTS

	<u>Page</u>
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
OPINIONS BELOW	1
JURISDICTION.....	2
STATUTES INVOLVED	3
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT.....	9

I

THE BANKRUPTCY COURT ORDER PERMANENTLY ENJOINING A NONDEBTOR FROM PURSUING ITS INDEPENDENT CONTRACTUAL RIGHTS AGAINST A NONDEBTOR EXCEEDS THE JURISDICTION OF THAT COURT AND IS CONTRARY TO THE STATUTORY LAW AND DECISIONS SET FORTH BY THIS COURT AND OTHER CIRCUITS	9
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II

PROPERTY INTERESTS CREATED AND DEFINED BY STATE LAW SHOULD NOT BE DETERMINED BY A BANKRUPTCY COURT IN SUMMARY FASHION AND WITHOUT REFERENCE TO STATE LAW	21
--	----

III

BECAUSE THIS CASE INVOLVES IMPORTANT ISSUES AFFECTING THE ADMINISTRATION OF THE BANKRUPTCY LAWS AND WILL IMPACT MANY PENDING AND FUTURE BANKRUPTCY CASES OF TORTFEASOR DEBTORS AND OTHERS, AN EARLY DECISION ON THESE ISSUES BY THIS COURT IS DESIRABLE	24
CONCLUSION	26
APPENDIX [Separately Bound]	

TABLE OF AUTHORITIES

Cases

	<u>Page</u>
<i>A.H. Robins Co. v. Piccinin (In re A.H. Robins Co.)</i> , 788 F.2d 994 (4th Cir.), <i>cert. denied</i> — U.S. —, 107 S. Ct. 251 (1986)	14, 16
<i>AOV Industries, Inc., In re</i> , 792 F.2d 1140 (D.C. Cir. 1986)	20
<i>Aetna Casualty & Surety Co. v. Martin Surgical Supply Co.</i> , 689 S.W.2d 263 (Tex. Ct. App. 1985) 10, 22	
<i>American White Cross Laboratories, Inc. v. Continen- tal Insurance Co.</i> , 202 N.J. Super. 372, 495 A.2d 152 (N.J. Super. Ct. App. Div. 1985)	22
<i>Beacon Theatres v. Westover</i> , 359 U.S. 500 (1959)	15
<i>Butner v. United States</i> , 440 U.S. 48 (1979)	22
<i>Callaway v. Benton</i> , 336 U.S. 132 (1948)	11
<i>Caplin v. Marine Midland Grace Trust Co.</i> , 406 U.S. 416 (1972)	14
<i>City of Milwaukee v. Illinois</i> , 451 U.S. 304 (1981)	23
<i>Commercial Wholesalers, Inc. v. Investors Commer- cial Corp.</i> , 172 F.2d 800 (9th Cir. 1949)	12
<i>Consolidated Motor Inns v. BVA Credit Corp. (In re Consolidated Motor Inns)</i> , 666 F.2d 189 (5th Cir. 1982)	12
<i>Cooper Laboratories, Inc. v. International Surplus Lines Insurance Co.</i> , 802 F.2d 667 (3d Cir. 1986)	22
<i>Davis, In re</i> , 730 F.2d 176 (5th Cir. 1984)	5, 14, 16
<i>First National Bank of Herkimer v. Poland Union</i> , 109 F.2d 54 (2d Cir. 1940)	11, 12

TABLE OF AUTHORITIES

CASES

	<u>Page</u>
<i>GAF Corp. v. Johns-Manville Corp. (In re Johns-Manville Corp.)</i> , 26 B.R. 405 (Bankr. S.D.N.Y. 1983)	5
<i>Gamble Skogmo, Inc. v. Aetna Casualty and Surety Co.</i> , 390 N.W. 2d 343 (Minn. Ct. App. 1986) ...	22
<i>Great Atlantic and Pacific Tea Co. v. Pepsi Cola Bottling Co.</i> , 209 F. Supp. 629 (E.D.Ill. 1962) ..	22
<i>Guaranty Trust Co. v. York</i> , 326 U.S. 99 (1944) ..	23
<i>Haiges v. Chatz (In re Oak Park Cleaners & Dyers, Inc.)</i> , 125 F.2d 420 (7th Cir. 1942)	10
<i>Hat-Hanseatische Anlage v. Sago Palms Joint Venture (In re Sago Palms Joint Venture)</i> , 39 B.R. 9 (Bankr. S.D. Fla. 1984)	12
<i>Jandel v. Precision Colors, Inc. (In re Jandel)</i> , 19 B.R. 415 (Bankr. S.D. Ohio 1982)	18
<i>Johns-Manville Corp., In re</i> , 68 B.R. 618 (Bankr. S.D.N.Y. 1986)	8
<i>Johns-Manville Corp. v. Asbestos Litigation Group (In re Johns-Manville Corp.)</i> , 26 B.R. 420 (Bankr. S.D.N.Y. 1983), <i>aff'd</i> , 40 B.R. 219 (S.D.N.Y. 1984)	4, 5, 14, 15
<i>Liberty Mutual Insurance Co. v. Home Insurance Co.</i> , 583 F. Supp. 849 (W.D. Pa. 1984)	22
<i>Louisiana World Exposition, Inc. v. Federal Insurance Co. (In re Louisiana World Exposition, Inc.)</i> , 832 F.2d 1391 (5th Cir. 1987)	14
<i>MacArthur Co. v. Johns-Manville Corp.</i> , 837 F.2d 89 (2d Cir. 1988)	8, 13, 20

TABLE OF AUTHORITIES

CASES

	<u>Page</u>
<i>Mattocks v. Daylin, Inc.</i> , 452 F. Supp. 512 (W.D. Pa. 1978)	22
<i>Nine North Church Street, Inc., In re</i> , 82 F.2d 186 (2d Cir. 1936)	11
<i>Northern Pipeline Construction Co. v. Marathon Pipe Line Co.</i> , 458 U.S. 50 (1982)	25
<i>Northwest Airlines, Inc. v. Transport Workers Union</i> , 451 U.S. 77 (1981)	23
<i>Northwestern Mutual Insurance Co. v. Farmers' Insurance Group</i> , 76 Cal. App. 3d 1031 (Cal. Ct. App. 1978)	11
<i>Otero Mills, Inc. v. Security Bank & Trust (In re Otero Mills, Inc.)</i> , 25 B.R. 1018 (D.N.M. 1982)	16
<i>Plessey Precision Metals, Inc. v. Metal Center, Inc. (In re Metal Center, Inc.)</i> , 31 B.R. 458 (Bankr. D. Conn. 1983)	16
<i>R.I.D.C. Industrial Development Fund v. Snyder</i> , 539 F.2d 487 (5th Cir. 1976), <i>cert. denied</i> 429 U.S. 1095 (1977)	11, 12
<i>Ray v. Norseworthy</i> , 90 U.S. (23 Wall.) 128 (1874)	17
<i>Richardson v. Pitt County (In re Stroud Wholesale, Inc.)</i> , 47 B.R. 999 (Bankr. E.D.N.C. 1985)	18
<i>Sears Roebuck and Co. v. Employers Insurance of Wausau</i> , 585 F. Supp. 739 (N.D. Ill. 1983)	22
<i>Sears Roebuck and Co. v. Liberty Mutual Insurance Co.</i> , 199 F. Supp. 769 (N.D. Ill. 1961)	22
<i>Sears Roebuck and Co. v. Reliance Insurance Co.</i> , 654 F.2d 494 (7th Cir. 1981)	22

TABLE OF AUTHORITIES

CASES

	<u>Page</u>
<i>Seybolt v. Bio-Energy of Lincoln, Inc.</i> , 38 B.R. 123 (Bankr. D. Mass. 1984)	16
<i>Shapiro v. Republic Indemnity Co.</i> , 52 Cal. 2d 437 (1959)	11
<i>Sierra Club v. Alexander</i> , 484 F. Supp. 455 (N.D.N.Y.), <i>aff'd mem.</i> , 633 F.2d 206 (2d Cir. 1980)	15
<i>Texas Industries, Inc. v. Radcliff Materials, Inc.</i> , 451 U.S. 630 (1981)	22, 23
<i>Underhill v. Royal</i> , 769 F.2d 1426 (9th Cir. 1985)	11
<i>Union Carbide Corp. v. Newboles</i> , 686 F.2d 593 (7th Cir. 1982)	11
<i>United States v. Stribling Flying Service, Inc.</i> , 734 F.2d 221 (5th Cir. 1984)	11
<i>Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)</i> , 75 B.R. 944 (Bankr. N.D. Ohio 1987)	19
<i>W. T. Grant Co., Inc. v. USF&G Insurance Co.</i> , 279 Pa. Super. 591, 421 A.2d 357 (Pa. Super. Ct. 1980)	22

Publications

6 Broken Bench Review 13 (1987)	10
---------------------------------------	----

Statutes

11 U.S.C. § 16 (repealed)	13
11 U.S.C. § 101, <i>et seq.</i>	4
11 U.S.C. § 105	3, 15
11 U.S.C. § 105(a)	8
11 U.S.C. § 362	4

TABLE OF AUTHORITIES

STATUTES

	<u>Page</u>
11 U.S.C. § 363	3, 8, 19
11 U.S.C. § 363(f)	16, 17, 18
11 U.S.C. § 363(h)	19
11 U.S.C. § 363(i)	19
11 U.S.C. § 363(j)	19
11 U.S.C. § 524	3
11 U.S.C. § 524(e)	12
11 U.S.C. § 541	3, 14
28 U.S.C. § 1254(1)	2

Treatises

1A J. Moore and J. Mulder, Collier on Bankruptcy ¶¶ 16.01-16.02 (14th ed. 1978 & Supp. 1987) ...	13
2 L. King, Collier on Bankruptcy ¶ 363.07 (15th ed. 1979 & Supp. 1987)	17

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**On Petition for Writ of Certiorari
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for the Second Circuit**

PETITION FOR WRIT OF CERTIORARI

The petitioners MacArthur Company and Western MacArthur Company respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The order approving settlement agreements and containing permanent injunctions of the United States Bankruptcy Court for the Southern District of New York

(Lifland, B.J.) has not been reported. It is reprinted in Appendix A, contained in a separate volume filed concurrently herewith.

The order approving additional settlement agreements and containing permanent injunctions of the United States Bankruptcy Court for the Southern District of New York (Lifland, B.J.) has not been reported. It is reprinted in Appendix B, contained in a separate volume filed concurrently herewith.

The decision of the United States District Court for the Southern District of New York (Knapp, J.) has not been reported. It is reprinted in Appendix C, contained in a separate volume filed concurrently herewith.

The opinion of the United States Court of Appeals for the Second Circuit (Newman, C.J.) is reported at 837 F.2d 89 and is reprinted in Appendix D, contained in a separate volume filed concurrently herewith.

The order of the United States Court of Appeals for the Second Circuit denying petitioners' petition for a rehearing in the Second Circuit Court of Appeals has not been reported. It is reprinted in Appendix E, contained in a separate volume filed concurrently herewith.

JURISDICTION

The opinion of the United States Court of Appeals for the Second Circuit was decided January 19, 1988. The Order of the United States Court of Appeals for the Second Circuit denying petitioners' petition for a rehearing was filed on March 21, 1988.

The jurisdiction of this Court to review the judgment of the Second Circuit is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

- 11 U.S.C. § 105 Power of court.
- 11 U.S.C. § 363 Use, sale, or lease of property.
- 11 U.S.C. § 524 Effect of discharge.
- 11 U.S.C. § 541 Property of the estate.

The text of these statutes is reprinted in Appendix F, contained in a separate volume filed concurrently herewith.

STATEMENT OF THE CASE

MacArthur Company and Western MacArthur Company (hereinafter collectively "MacArthur") were long-time distributors of asbestos and asbestos-containing products manufactured by Johns-Manville Corporation and the related Manville entities named as respondents to this action (hereinafter collectively "Manville"). From 1951 through 1976, Manville had primary product liability insurance coverage from Travelers Indemnity Company and Travelers Insurance Company ("Travelers"). The Travelers policies in effect from July, 1963 through July, 1972 contain vendor endorsements which provide to vendors, including MacArthur, insurance coverage coextensive with that of Manville.

In addition, Manville had during this period excess liability coverage in amounts greatly exceeding the Travelers' coverage. Several excess policies had no aggregate limit. The excess policies adopt the terms of the coverage of the Travelers policies, thereby providing the vendors excess insurance coverage coextensive with that of Manville. Both the primary Travelers policies and the excess policies cover the cost of defense at least up to the limits of liability of the policies. MacArthur maintains, as Manville once did, that Travelers has a duty to defend

claims asserted against insureds even after it has paid in full the underlying per occurrence or aggregate limits. R.I. 649 pp. 38-49.¹

Beginning in the late 1960's, and with increasing frequency during the 1970's and early 1980's, Manville, together with other asbestos producers, was sued by thousands of individuals and entities claiming health and property damage due to asbestos-related diseases and conditions. Numerous insurance carriers denied or restricted coverage with respect to Manville's asbestos liabilities. Accordingly, in 1980, Manville sued its insurers in a California state court for a declaratory judgment of its rights to insurance. Some of the major complex issues in that massive litigation are the choice of law to be applied to the policies, the insurer's duty to defend, and the time when the asbestos-related bodily injury occurs and "triggers" coverage under the various policies. R.I. 641.

Based upon the increasing number of tort claims filed against Manville and its own projection of its health claim liability through the year 2001 of at least \$1.9 billion (R.I. 360, p. 3), Manville filed a petition under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, on August 26, 1982.

Pursuant to 11 U.S.C. § 362, the filing of the Chapter 11 petition automatically enjoined all lawsuits against Manville. Under the rationale that they were necessary for its reorganization, Manville obtained temporary injunctions of actions against Manville's employees, agents and related entities, *Johns-Manville Corp. v. Asbestos Litigation Group (In re Johns-Manville Corp.)*, 26 B.R. 420

¹Citations in the form "R.I. ____" are to the numbered record items filed with the court below.

(Bankr. S.D.N.Y. 1983), *aff'd*, 40 B.R. 219 (S.D.N.Y. 1984) and its insurers and sureties, *id.* and *In re Davis*, 730 F.2d 176 (5th Cir. 1984). The Bankruptcy Court denied the motion of a number of its co-defendants to extend the stay to actions against them. *GAF Corp. v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 26 B.R. 405 (Bankr. S.D.N.Y. 1983).

One result of the Manville bankruptcy filing was the shifting of product liability suits away from Manville and toward Manville's distributors. Thus MacArthur became the target of more than 7,000 lawsuits based on Manville's tortious conduct. The aggregate dollar amount of the judgments, settlements and defense costs already incurred by MacArthur is staggering, and increasing every day.

Beginning in 1984 and continuing through 1986, Manville negotiated settlement agreements with all of its solvent insurers ("Settlement Agreements"). While the settlement amounts and several settlement terms varied among the 24 Settlement Agreements, each contained provisions requiring an order of the Bankruptcy Court transferring any and all claims with respect to Manville's policies and attaching them solely to the settlement fund created thereunder, releasing the settling insurer from any and all claims, deeming the subject policies exhausted, and enjoining any suit with respect to the policies against the settling insurer (the "Injunction").

The Settlement Agreements were contingent upon Manville obtaining a final court order approving them and issuing the Injunction. Under the Settlement Agreements, approximately \$730 million of proceeds was earmarked for the trusts to be created by Manville's plan of reorganization in an attempt to satisfy asbestos claims. That

settlement amount was below the aggregate limits of the policies. R.I. 641, 649. Neither Manville nor the settling insurers ever consulted MacArthur or obtained MacArthur's consent to the compromise of its rights under the endorsements.

By applications dated August 2, 1984 and October 27, 1986, Manville sought Bankruptcy Court approval of the Settlement Agreements. MacArthur filed a timely objection to the Settlement Agreements on the grounds that they compromised MacArthur's direct rights to insurance under the vendor endorsements. MacArthur asserted that because the insurance policies had not been exhausted and further provided a duty to defend, MacArthur retained its claims against the policies as an additional insured. Therefore, the injunction of actions against the settling insurers would deprive MacArthur of its rights.

At the Bankruptcy Court hearing on November 19, 1986 to determine the fairness of the Settlement Agreements, Manville took the position that the Travelers policies were exhausted. R.I. 659, p. 23. There was, however, no testimony that the limits of the excess policies were exhausted or that Travelers' duty to defend had expired. A Manville lawyer in the California litigation² acknowledged that he had long been aware of the existence of the vendor endorsements and stated that he did not represent MacArthur's interests under the endorsements during the negotiations with the settling insurers leading to the Settlement Agreements. He did contend, however, that the vendor endorsements were a factor in the negotia-

²Evidence at the hearing consisted of the testimony of Richard Von Wald, Vice President and corporate counsel of Manville, and Curtis M. Caton, outside counsel to Manville. Their testimony generally concerned the issues in the California litigation and the insurance policies.

tions. No evidence offered at the hearing related to the validity of the vendor endorsements or the value of MacArthur's rights thereunder.

MacArthur argued that inasmuch as it was sustaining great losses with respect to liability claims derivative of Manville and such lawsuits were likely to continue for the foreseeable future, it would be significantly harmed by the Injunction. MacArthur asserted that due to the vendor endorsements on the policies it had direct rights against the insurance companies which were being nullified by the Settlement Agreements. In addition, MacArthur questioned the Bankruptcy Court's jurisdiction to change, much less destroy, the contractual relationship between two nondebtors.

The Bankruptcy Court adopted Manville's argument that MacArthur's rights under the policies were "highly speculative" and not "of sufficient substance to justify the requested relief." Because the proceeds of the Settlement Agreements formed the "cornerstone of any reorganization of Johns-Manville," the Court held that the agreements must be approved. The Court implied that MacArthur's rights were adequately protected by the indemnity proof of claim it had filed in the Manville case.

On December 15, 1986, Manville executed an application for approval of an insurance settlement agreement with Columbia Casualty Company and Continental Casualty Company. MacArthur renewed its objection to the Settlement Agreements. No evidentiary hearing was held on this settlement. By orders dated December 18, 1986 and January 14, 1987, all of the Settlement Agreements were approved by the Bankruptcy Court. Upon MacArthur's appeal, the United States District Court for the Southern District of New York, Judge Knapp presiding, summarily affirmed on July 15, 1987.

During the period in which Manville was seeking approval of the Settlement Agreements, it proposed a Second Amended and Restated Plan of Reorganization which was confirmed by the Bankruptcy Court on December 18, 1986 as amended on December 19 and December 23, 1986. *In re Johns-Manville Corp.*, 68 B.R. 618 (Bankr. S.D.N.Y. 1986). The plan creates an asbestos health trust which is largely funded by the insurance settlement proceeds. The plan provides for the Injunction against the settling insurers described above and an injunction of suits against Manville for asbestos-related liability. The claims which otherwise would be asserted against Manville and its insurers are channeled to the trust. The plan classifies all asbestos health claims, including the claims of distributor co-defendants, in one class and the treatment of such claims is not distinguished on the basis of their derivative or direct rights against the insurance policies. R.I. 360, p. 21.

The Second Circuit affirmed the District Court in an opinion reported at 837 F.2d 89 and decided on January 19, 1988. The Second Circuit found that the Bankruptcy Court had jurisdiction to issue the Injunction because the debtor's insurance policies are property of the estate and MacArthur's rights thereunder are completely derivative of Manville's rights as the primary insured. No state law analysis was made. The Court of Appeals then held that the Bankruptcy Court had the authority to approve the settlements and to channel claims arising under the policies to the proceeds of the settlement under 11 U.S.C. §§ 363 and 105(a).

The Court of Appeals decision acknowledges that Manville's "sale" of MacArthur's interest does not fall within the traditional use of the sale and channeling power. Nevertheless, it found the sale appropriate under

the court's broad equitable powers because it is essential to a workable reorganization. Finally, the Second Circuit concluded that MacArthur's remedy was to proceed in the Bankruptcy Court against the insurance settlement proceeds.

MacArthur filed with the Second Circuit Court of Appeals a petition for rehearing which was denied on March 21, 1988.

REASONS FOR GRANTING THE WRIT

I

THE BANKRUPTCY COURT ORDER PERMANENTLY ENJOINING A NONDEBTOR FROM PURSUING ITS INDEPENDENT CONTRACTUAL RIGHTS AGAINST A NONDEBTOR EXCEEDS THE JURISDICTION OF THAT COURT AND IS CONTRARY TO THE STATUTORY LAW AND DECISIONS SET FORTH BY THIS COURT AND OTHER CIRCUITS.

Overwhelmed by the enormity of the Manville bankruptcy case, the lower court ignored bankruptcy courts' jurisdictional limitations and granted extraordinary remedies, available only to debtors, to a contractual relationship among nondebtors. Without correction, the Bankruptcy Court's decision, as affirmed by the Second Circuit, will create an untenable exception to the well-established boundaries of bankruptcy court jurisdiction. Such an exception will extinguish the independent rights of nondebtors against nondebtors and contort the limited role of the bankruptcy court.

With the increase in bankruptcy filings of otherwise solvent companies for the purpose of confining present

and future liability caused by mass torts³, it is likely that Manville's plan of reorganization will become a blueprint for tortfeasor debtors for years to come. There is danger that the precedent set below with respect to MacArthur's contractual rights will go unrectified and be repeated in numerous cases, not limited to mass tort situations, to follow.⁴

While MacArthur does not dispute Manville's right to direct claims against its estate to the trusts, enjoin the pursuit of claims against it or even enjoin the pursuit of claims against the settling insurers by claimants with no direct rights against them,⁵ MacArthur vigorously protests Manville's eradication of MacArthur's rights under the vendor endorsements. The vendor endorsements create a separate and direct contractual right of MacArthur against certain of the settling insurers. *Aetna Casualty & Surety Co. v. Martin Surgical Supply Co.*, 689 S.W.2d 263 (Tex. Ct. App. 1985) (vendor endorsement creates in

³Tortfeasor debtors include A. H. Robins Company, Amatex Corporation, Aqua Slide 'n Dive, Pacor, Inc., and Unarco Industries, Inc., among others.

⁴Bankruptcy law publications agree that the confirmation of the Manville plan and approval of the Injunction create a new and worrisome precedent. Broken Bench Review, a publication for bankruptcy lawyers, opens its article on the Manville plan as follows: "Manville Plan And Confirming Order Break New Ground In Reorganization Law. Out Of The Mists Appears 'The Channeling Injunction' — A New Creature Striding Across The Bankruptcy Reorganization World. Innovative Analogy To Sales Free And Clear Of Liens Takes Us 'Beyond Cramdown' Into New Realms Of Delight — Or Terror — Depending On Who Stands In The Way Of The Creature." 6 Broken Bench Review 13 (1987).

⁵But see *Haiges v. Chatz (In re Oak Park Cleaners & Dyers, Inc.)*, 125 F.2d 420 (7th Cir. 1942) (bankruptcy court does not have the power to protect purchaser of estate's assets after sale).

vendor distinct rights against insurer as additional insured); *Northwestern Mutual Insurance Co. v. Farmers' Insurance Group*, 76 Cal. App. 3d 1031 (Cal. Ct. App. 1978) (additional insureds have the same rights as named insureds). Outside of the bankruptcy context, Manville would not be able, unilaterally or by agreement with the insurer, to deny retroactively MacArthur's rights under the endorsements. *See Shapiro v. Republic Indemnity Co.*, 52 Cal. 2d 437 (1959) (Traynor, J.) (insurer and insured cannot alter rights of beneficiary after injury suffered). Such interference with third parties' contracts should not be sanctioned by the bankruptcy court. *See Callaway v. Benton*, 336 U.S. 132, 142 (1948) (bankruptcy court cannot bind creditor on rights not asserted against the estate).

It has long been recognized that the protections and privileges of the Bankruptcy Code are reserved only for those who make their assets available to creditors and who accept the restrictions and requirements of the court and Code. *First National Bank of Herkimer v. Poland Union*, 109 F.2d 54 (2d Cir. 1940). Therefore it is well-settled that a guarantor cannot be discharged by the bankruptcy discharge of the underlying debt. *Underhill v. Royal*, 769 F.2d 1426 (9th Cir. 1985); *United States v. Stribling Flying Service, Inc.*, 734 F.2d 221 (5th Cir. 1984); *Union Carbide Corp. v. Newboles*, 686 F.2d 593 (7th Cir. 1982), *R.I.D.C. Industrial Development Fund v. Snyder*, 539 F.2d 487 (5th Cir. 1976), *cert. denied* 429 U.S. 1095 (1977); *In re Nine North Church Street, Inc.*, 82 F.2d 186 (2d Cir. 1936). In *Nine North Church Street*, the Second Circuit held:

By its guaranty, Maryland promised to meet certain obligations and these are not affected by the reorganization of this debtor. Any modification of

this contract can only be justified by the bankruptcy power which extends only to the relief of insolvent or hard pressed debtors. If Maryland is in that class, it must come into court and establish the fact. It cannot modify its obligations by the reorganization of other insolvents.

Id. at 188. Similarly, the Fifth Circuit stated: "The Bankruptcy Court can affect only the relationships of debtors and creditor. It has no power to affect the obligations of guarantors." *R.I.D.C. Industrial Development Fund v. Snyder*, 539 F.2d 487, 490 n.3 (5th Cir. 1976) (citations omitted).

This basic rule of bankruptcy jurisdiction has been applied to overrule plans enjoining actions against the debtor's predecessors, *Commercial Wholesalers, Inc. v. Investors Commercial Corp.*, 172 F.2d 800 (9th Cir. 1949); enjoining creditors' suits against the debtor's shareholders, *First National Bank of Herkimer v. Poland Union*, 109 F.2d 54 (2d Cir. 1940); discharging the debts of individual partners of a partnership debtor, *Consolidated Motor Inns v. BVA Credit Corp. (In re Consolidated Motor Inns)*, 666 F.2d 189 (5th Cir. 1982); and releasing the debtor's principal of liability, *Hat-Hanseatische Anlage v. Sago Palms Joint Venture (In re Sago Palms Joint Venture)*, 39 B.R. 9 (Bankr. S.D. Fla. 1984).

The tenet that a nondebtor's obligations cannot be discharged in bankruptcy is apparent in 11 U.S.C. § 524(e), which provides in pertinent part that "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." This provision was derived without substantive change from Section 16 of the former Bankruptcy Act, which provides, "The liability of a person who is a co-debtor with or guarantor or in any manner a surety for, a

bankrupt shall not be altered by the discharge of such bankrupt." Bankruptcy Act of 1898, 11 U.S.C. § 16 (repealed). All of the former bankruptcy acts contained similar provisions, which are grounded in the well-settled doctrines that a discharge in bankruptcy affects only the personal liability of the debtor and not that of any other person and that a discharge is by operation of law and not by consent of the creditors. 1A J. Moore and J. Mulder, *Collier on Bankruptcy* ¶¶ 16.01-16.02 (14th ed. 1978 & Supp. 1987).

The Second Circuit, following Manville's argument, attempts to distinguish the established jurisdictional doctrine against discharging nondebtors by stating that "the injunctive orders do not offer the umbrella protection of a discharge in bankruptcy. Rather, they preclude only those suits against the settling insurers that arise out of or relate to Manville's insurance policies." *MacArthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, 91 (2d Cir. 1988). This logic creates a distinction without a difference.⁶ Like a discharge, the effect of the Injunction is to protect the settling insurers from any future liability with respect to Manville's tortious conduct. The Injunction is permanent and affects all policy claims. Whatever appellation it is given, the Injunction has the effect of discharging MacArthur's claims against the settling insurers.

The Second Circuit continues, "Moreover, claims against the insurers based on Manville's policies are not extinguished; they are simply channeled away from the

⁶If the Second Circuit's distinction rests on the fact that the insurers' obligations unrelated to Manville are not released, it should be noted that the overruled plans in the cases cited above released the nondebtors only of liability related to the debtors. MacArthur does not believe that even Manville would attempt to release the insurers of all of their obligations under all of their policies.

insurers and redirected at the proceeds of the settlement." *Id.* As will be discussed further, *infra* at 20, MacArthur would have only theoretical cause to protest this result if it could be assured, or even confident, that all of its indemnity claims and costs of defense would be paid in full by the trust. Unfortunately, Manville offers no such assurances.

MacArthur does not challenge Manville's right to compromise its interest in the policies. It is MacArthur's direct contractual rights against the policies that Manville cannot compromise. Paraphrasing a recent Fifth Circuit decision, the fact that Manville owns the policies does not mean that Manville owns all of the proceeds and rights under the policies. *See Louisiana World Exposition, Inc. v. Federal Insurance Co. (In re Louisiana World Exposition, Inc.)*, 832 F.2d 1391, 1401 (5th Cir. 1987). The vendor endorsements give MacArthur direct rights against the insurers which Manville does not own and cannot annul. *See Caplin v. Marine Midland Grace Trust Co.*, 406 U.S. 416 (1972) (trustee cannot settle claims of creditors against third parties and confirm a plan releasing such claims).

MacArthur does not dispute that Manville's rights in the policies are property of Manville's estate under 11 U.S.C. § 541. MacArthur does dispute that MacArthur's rights under the policies are property of Manville's estate. Clearly, should the press of asbestos liability suits against MacArthur as a distributor of Manville products force MacArthur into bankruptcy, MacArthur's contractual rights under the Manville policies would be property of MacArthur's estate. *See A.H. Robins Co. v. Piccinin (In re A.H. Robins Co.)*, 788 F.2d 994 (4th Cir.), *cert. denied* — U.S. —, 107 S. Ct. 251 (1986); *In re Davis*, 730 F.2d 176 (5th Cir. 1984); *Johns-Manville Corp. v. Asbestos*

Litigation Group (In re Johns-Manville Corp.), 26 B.R. 420 (Bankr. S.D.N.Y. 1983), *aff'd*, 40 B.R. 219 (S.D.N.Y. 1984). Therefore, Manville's attempt to sell MacArthur's property should not be sanctioned.

Even if the Injunction is not an impermissible discharge, it was not a proper exercise of a bankruptcy court's authority under 11 U.S.C. § 105.⁷ That section, which allows the bankruptcy court to "issue any order, process or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code, does not delete the traditional required showings for the issuance of an injunction.

No actual showing of irreparable harm or the inadequacy of legal remedies was made and the Bankruptcy Court made no corresponding findings. *Beacon Theatres v. Westover*, 359 U.S. 500 (1959). More important, with respect to MacArthur, Manville did not succeed on the merits. *Sierra Club v. Alexander*, 484 F. Supp. 455, 471 (N.D.N.Y.), *aff'd mem.*, 633 F.2d 206 (2d Cir. 1980). In fact, the merits of MacArthur's rights under the insurance policies were never tried. No briefs were filed or evidence submitted on the state law insurance issues and no justification for the court's conclusion that MacArthur's rights were "highly speculative" was enunciated. Without such a decision on the merits, no permanent injunction should have issued.

⁷MacArthur questions the bankruptcy court's power to enter the Injunction without MacArthur's consent. Moreover, the Injunction is clearly improper because it is not broad enough to protect the parties whose rights it destroys. Rather than forcing its distributors to defend Manville's tortious conduct, Manville should have extended the Injunction throughout the chain of entities whose liability is solely derivative and left the trusts as the sole fora for Manville asbestos claimants.

The decisions upholding bankruptcy court injunctions prohibiting suits between nondebtors with respect to prepetition claims are limited to preliminary injunctions issued prior to and expiring at the confirmation of a plan. See *A.H. Robins Co. v. Piccinin (In re A.H. Robins Co.)*, 788 F.2d 994 (injunction of suits against nondebtors proper to allow debtor "breathing room" since plaintiffs can seek relief from the stay at any time); *In re Davis*, 730 F.2d 176 (injunction upheld in part because plaintiff can move for relief from stay). Indeed, injunctions of suits against guarantors, specifically prohibited postconfirmation by the cases cited *supra* at 11, have been issued for the postpetition preconfirmation period. See *Plessey Precision Metals, Inc. v. Metal Center, Inc. (In re Metal Center, Inc.)*, 31 B.R. 458 (Bankr. D. Conn. 1983), *Seybolt v. Bio-Energy of Lincoln, Inc.*, 38 B.R. 123 (Bankr. D. Mass. 1984). The apparent absence of cases enjoining postconfirmation suits between nondebtors with respect to prepetition claims is evidence that the jurisdiction to do so is limited to the pendency of the Chapter 11 case.

The rationale that an injunction is necessary for or in aid of a reorganization, while sometimes stretched too far, see *Otero Mills, Inc. v. Security Bank & Trust (In re Otero Mills, Inc.)*, 25 B.R. 1018 (D.N.M. 1982), is justifiable preconfirmation. The line must be drawn once a plan is confirmed. The fact that Manville has crossed that line mandates that certiorari be granted.

Manville erroneously asserts that the Settlement Agreements are justified as a sale free and clear of liens and interests under 11 U.S.C. § 363(f) with interests

attaching to the sale proceeds, *i.e.*, the trusts.⁸ Under § 363(f), the debtor may sell property of the estate free and clear of any interest of another entity under certain circumstances. MacArthur asserts that § 363(f) was never intended to apply to the present situation. That section has traditionally been used to authorize the trustee's sale of tangible property subject to liens, as the Second Circuit admitted. In a tangible property situation there is open, competitive bidding, as opposed to closed door negotiations between trustee and "purchaser." The court, trustee and lienholders each have independent means to evaluate the purchase offer and determine whether a reasonable price is being offered. *Ray v. Norseworthy*, 90 U.S. (23 Wall.) 128 (1874); 2 L. King, *Collier on Bankruptcy* ¶ 363.07 (15th ed. 1979 & Supp. 1987). More important, in most cases the value of a lien on tangible property can be readily ascertained. The value of MacArthur's rights as an additional insured can be known only in retrospect after all asbestos health claims have been identified and liquidated. For these reasons, § 363(f) should not be misused to justify the nonconsensual compromise of insurance rights.

Even if § 363(f) is available in non-tangible property situations, it has not been correctly applied in this case. No showing was made that MacArthur's interest as an additional insured is in bona fide dispute, as required by subsection (4). The Second Circuit has erroneously accepted Manville's contention that MacArthur's rights are in dispute merely because the insurance policies are now exhausted. The fallacy in that logic is that the excess policies are only exhausted because the Bankruptcy Court

⁸During the bankruptcy court hearings on these issues, Manville only mentioned § 363 in passing and never attempted to make any showing to meet its requirements. R.I. 659, pp. 114-16.

deemed them to be exhausted in approving the Settlement Agreements.⁹ The insurance companies did not agree to a settlement in which they paid the full amount of their exposure.

In addition, it has been held that subsection (4) only codifies the long-standing law allowing a sale free and clear when the validity of the lien is in dispute. *Richardson v. Pitt County (In re Stroud Wholesale, Inc.)*, 47 B.R. 999, 1002 (Bankr. E.D.N.C. 1985). As the *Stroud* court pointed out, a sale under that subsection is not justified merely because there is a dispute as to the distribution of the proceeds of the sale. *Id.* In the present case, Manville has never disputed the existence or effect of the vendor endorsements.

Moreover, § 363(f) does not allow a sale free and clear of contract rights. The section was only intended to encompass judicial liens, security interests, and statutory liens. *Jandel v. Precision Colors, Inc. (In re Jandel)*, 19 B.R. 415, 419-20 (Bankr. S.D. Ohio 1982) (trustee cannot sell shares of stock free and clear of contractual rights of minority shareholders).

Even if § 363(f) were appropriately applied to MacArthur's rights, the order which indiscriminately "channels" MacArthur's rights in the policies into a pool containing all tort claims against Manville cannot withstand scrutiny. Only MacArthur's "interest" and those of other vendors should be channeled to the settlement proceeds. Once those interests are satisfied, the remaining proceeds

⁹Manville may erroneously believe that MacArthur's rights under the vendor endorsements are limited to the Travelers policies. Because the excess policies adopt the terms of the Travelers policies, however, MacArthur's rights under the endorsements extend to the full limits of the excess policies.

are available to Manville's creditors. To stretch § 363 so that tort claimants against Manville have direct interests in the insurance policies is not authorized by the statute. See *Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944 (Bankr. N.D. Ohio 1987) (because tort claimants have no specific interest in a debtor's property, § 363 is inapplicable for sales free and clear of such claims).

Furthermore, MacArthur asserts its direct insurance rights give it ownership rights in the policies. Accordingly, assuming *arguendo* that a claim for insurance can be sold, § 363(h) applies. That section allows for the sale of property co-owned by the debtor under certain conditions. Manville never made a showing that it met those conditions. Nor did it comply with the requirement in § 363(i) allowing MacArthur to participate in negotiations regarding the sales price of MacArthur's rights. Even if Manville had met those conditions enabling it to sell the co-owned property, it would still have had to distribute to MacArthur MacArthur's share of the proceeds before distributing to its creditors Manville's share of the proceeds under 11 U.S.C. § 363(j). The Manville Settlement Agreements and plan did not attempt to accomplish this statutorily mandated result. In practical terms, Manville would have had to segregate the amount of proceeds from the policies at issue and reserve that fund for payment of MacArthur's claims for insurance.

Viewed from another perspective, while MacArthur's liability is admittedly derivative of Manville's liability, MacArthur's rights to the policy proceeds are not derivative due to the vendor endorsements. As such, MacArthur is entitled to priority to the proceeds over other claimants. A claimant releasing a more valuable direct claim (as well as a derivative claim) should be entitled to more

than claimants releasing only derivative claims. *In re AOV Industries, Inc.*, 792 F.2d 1140 (D.C. Cir. 1986).

The Second Circuit found that MacArthur's interests are adequately protected because it retains the remedy of proceeding against the insurance proceeds. 837 F.2d at 94. Such finding is erroneous in that it fails to take into account two factors. First, insurance rights are distinctly different from claims for money. Especially in MacArthur's case, insurance is far more valuable. The major insurance companies involved in this case are more likely to be solvent and providing coverage into the twenty-first century than is the trust. The duty to defend as well as an implied duty to act in good faith, both only applicable to an insurer, are of great import to MacArthur as it continues to fight Manville's battles in state courts, not having been afforded the luxury of an injunction of actions against it.

Furthermore, Manville has consistently declined to make representations that the settlement proceeds or the trust will be able to satisfy all claims against it. R.I. 360, p. 9. In fact, because claims will be paid on a "first-come first-served" basis, there is a fair possibility that the trust will not be able to satisfy claims liquidated against MacArthur several years from now.¹⁰ Therefore, a claim against the proceeds alone, with no insurance coverage, will not assure that MacArthur is fully compensated for the taking of its insurance rights.

¹⁰Indeed, at the "Fairness Hearing" Manville characterized the notion that there would be an excess in the trust (then \$500 million) after claims are paid as "ludicrous" and "laughable." Manville stated that there was only an "infinitesimal possibility" that a surplus would remain. R.I. 659, p. 32.

In summary, MacArthur has direct nonderivative rights to the insurance benefits and proceeds. Manville's "sale" of those rights is improper under the Bankruptcy Code, especially if the sale does not reserve for MacArthur its undiluted share of the proceeds. More important, the Second Circuit's blessing of the Bankruptcy Court's *de facto* discharge of MacArthur's direct claims against Manville's insurers exceeds the jurisdiction of the bankruptcy court. This Court should review this case to correct the fundamental errors of the Second Circuit and to prevent other circuits from making the same jurisdictional mistakes.

II

PROPERTY INTERESTS CREATED AND DEFINED BY STATE LAW SHOULD NOT BE DETERMINED BY A BANKRUPTCY COURT IN SUMMARY FASHION AND WITHOUT REFERENCE TO STATE LAW.

If a bankruptcy court is allowed to determine the direct property rights that one nondebtor has in an insurance policy issued by another nondebtor in a summary proceeding without reference to governing state law, the myriad of problems once resolved by the *Erie* doctrine are bound to be revisited. MacArthur's rights as an additional insured against the settling insurers involve highly complex factual and legal issues. Yet, the Manville Bankruptcy Court determined that such rights were "highly speculative." This determination was made in the context of a 3½ hour hearing at which virtually no evidence was presented, briefs submitted or argument heard regarding

the underlying insurance issues or applicable state law.¹¹ Accordingly, it is clear that the Bankruptcy Court's conclusion regarding MacArthur's insurance rights was not based on state law, but rather on its notion of federal equity or federal common law¹². However well-meaning, the Bankruptcy Court was without power to so act.

Property interests are created and defined by state law. *Butner v. United States*, 440 U.S. 48 (1979). State law can only be rejected because of congressional command or because a federal approach serves an identifiable interest. *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981). Similarly, this Court has observed, "The enactment of a federal rule in an area of national concern, and the decision whether to displace state law in doing so, is generally made not by the federal judiciary, purpose-

¹¹Had the bankruptcy court looked to state law it would have found each and every reported state law vendor endorsement case has recognized the rights of vendor/insureds such as MacArthur. See *Cooper Laboratories, Inc. v. International Surplus Lines Insurance Co.*, 802 F.2d 667 (3d Cir. 1986); *Sears Roebuck and Co. v. Reliance Insurance Co.*, 654 F.2d 494 (7th Cir. 1981); *Sears Roebuck and Co. v. Employers Insurance of Wausau*, 585 F. Supp. 739 (N.D. Ill. 1983); *Liberty Mutual Insurance Co. v. Home Insurance Co.*, 583 F. Supp. 849 (W.D. Pa. 1984); *Mattocks v. Daylin, Inc.*, 452 F. Supp. 512 (W.D. Pa. 1978); *Great Atlantic and Pacific Tea Co. v. Pepsi Cola Bottling Co.*, 209 F. Supp. 629 (E.D. Ill. 1962); *Sears Roebuck and Co. v. Liberty Mutual Insurance Co.*, 199 F. Supp. 769 (N.D. Ill. 1961); *Gamble Skogmo, Inc. v. Aetna Casualty and Surety Co.*, 390 N.W. 2d 343 (Minn. Ct. App. 1986); *Aetna Casualty and Surety Co. v. Martin Surgical Supply Co.*, 689 S.W.2d 263 (Tex. Ct. App. 1985); *American White Cross Laboratories, Inc. v. Continental Insurance Co.*, 202 N.J. Super. 372, 495 A.2d 152 (N.J. Super. Ct. App. Div. 1985); *W. T. Grant Co., Inc. v. USF & G Insurance Co.*, 279 Pa. Super. 591, 421 A.2d 357 (Pa. Super. Ct. 1980).

¹²A similar analysis can be applied to the Second Circuit's conclusion that MacArthur's rights are "derivative."

fully insulated from democratic pressures, but by the people through their elected representatives in Congress." *City of Milwaukee v. Illinois*, 451 U.S. 304, 312-313 (1981) (citation omitted). In order to be uniquely federal and justify the imposition of a federal substantive rule, an interest must relate to an articulated congressional policy or directly implicate the authority and duties of the United States as sovereign. *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U.S. at 641; *Northwest Airlines, Inc. v. Transport Workers Union*, 451 U.S. 77 (1981).

Congress has not made policy on the issue of Manville's insurance coverage. Absent such specific action, the Court of Appeals' contention that the broad equitable powers of a bankruptcy court empowered it to abrogate (without evidence or reference to state law) MacArthur's contractual rights against the settling insurers is wrong. A similar argument was made in *Guaranty Trust Co. v. York*, 326 U.S. 99 (1944) where the plaintiff argued that a federal court's equitable powers and discretion constituted an exception to the *Erie* doctrine. In rejecting that claim, this Court stated:

[S]ince a federal court adjudicating a State created right solely because of the diversity of citizenship of the parties is for that purpose, in effect, only another court of the State, it cannot afford recovery if the right to recovery is made unavailable by the State nor can it substantially affect the enforcement of the right as given by the State.

Id. at 108-09. In creating courts of equity to preside over reorganization proceedings, Congress never gave, nor have the courts ever claimed, the power to deny substantive rights created by state law or to create substantive rights denied by state law. *Id.* at 105.

That Manville is in bankruptcy court and MacArthur is not should not lead to a difference in the treatment of their respective rights against their common insurers. The source of all substantive rights under the insurance policies is the law of the states. A writ should issue so that MacArthur may fully assert in an appropriate forum its state law rights as an additional insured under the policies.

III

BECAUSE THIS CASE INVOLVES IMPORTANT ISSUES AFFECTING THE ADMINISTRATION OF THE BANKRUPTCY LAWS AND WILL IMPACT MANY PENDING AND FUTURE BANKRUPTCY CASES OF TORTFEASOR DEBTORS AND OTHERS, AN EARLY DECISION ON THESE ISSUES BY THIS COURT IS DESIRABLE.

The approval of Manville's Settlement Agreements and plan, complete with channeling order and Injunction, has made new law and, MacArthur submits, bad law. Because of the end result — the creation of a vehicle to pay some part of asbestos health claims and the continued protection of the debtor — the plan is bound to be imitated often by the growing class of tortfeasor debtors. While the plan offers interesting approaches to new problems, one of the legs upon which it rests is flawed and without correction the Settlement Agreements and plan cannot stand.

There is a real threat that present and future debtors will pick up where Manville left off. Seeing that Manville was upheld in its abrogation of nondebtor-nondebtor contracts, debtors may become more bold and test how far the justification "necessary for the reorganization" can be stretched postconfirmation. The steadily main-

tained case law which denies a bankruptcy court jurisdiction to meddle with nondebtors' rights against one another will be further eroded. In this case only MacArthur and other vendors are prejudiced by the court's excessive reach. In future cases, not only vendors but many other parties, such as shareholders, guaranty-holders and partnership creditors, may be enjoined from pursuing their rights against nondebtors. Manville should not be allowed to start that trend.

As a matter of policy, insurance companies should not be given the message that if they settle with a debtor in bankruptcy court they will be allowed to escape their obligations to other insureds. It is not too outlandish to speculate that a result of such a message could be collusive bankruptcy filings in cases where insurers face substantial exposure. The precedential effect of the Second Circuit opinion will be far-reaching.

This Court has been active and vigilant in demarcating bankruptcy court jurisdiction. *See Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982). The present trend of bankruptcy cases allowing debtors free rein as long as actions are in aid of reorganization must be halted. This Court should step in now to assure that the fresh start given to debtors does not become a head start.

CONCLUSION

Based upon the foregoing, MacArthur respectfully requests that its petition for writ of certiorari be granted.

DATED: June 17, 1988

Respectfully submitted,

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PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On June 17, 1988, I served the within Petition for Writ of Certiorari in re: "MacArthur Company and Western MacArthur Company vs. Johns-Manville Corporation" in the United States Supreme Court, October Term 1987, No. 87-.....; and the separately bound Appendix;

On the Parties in said action, by placing Three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States Post Office mail box at Los Angeles, California, addressed as follows:

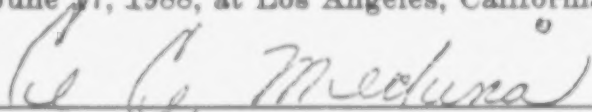
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All parties required to be served have been served.

I certify, under penalty of perjury, that the foregoing is true and correct.

Executed on June 17, 1988, at Los Angeles, California.

A handwritten signature in cursive script, appearing to read "Ce Ce Medina", is written over a horizontal line.

CE CE MEDINA

87-20822

No. 87-

Supreme Court, U.S.

FILED

JUN 20 1988

JOSEPH E. SPANIO, JR.
CLERK

In The Supreme Court

of the
United States

OCTOBER TERM 1987

MACARTHUR COMPANY AND WESTERN
MACARTHUR COMPANY,

Petitioners,

vs.

JOHNS-MANVILLE CORPORATION,
MANVILLE CORPORATION, et al.,

Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Second Circuit

APPENDIX

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APPENDIX INDEX

- A. Order of the United States Bankruptcy Court for the
Southern District of New York (Lifland, C.B.J.),
approving insurance settlement agreements and
containing permanent injunctions,
December 18, 1986

- B. Order of the United States Bankruptcy Court for the
Southern District of New York (Lifland, C.B.J.),
approving additional insurance settlement agreements and
containing permanent injunctions,
January 14, 1987

- C. Order of the United States District Court for the Southern
District of New York (Knapp, D.J.), July 15, 1987

- D. Opinion of the United States Court of Appeals for the
Second Circuit, January 19, 1988

- E. Order of the United States Court of Appeals for the
Second Circuit denying Petition for Rehearing,
March 21, 1988

- F. Text of 11 U.S.C. §105 Power of Court

- Text of 11 U.S.C. §363 Use, Sale, or Lease of Property .

- Text of 11 U.S.C. §524 Effect of Discharge

- Text of 11 U.S.C. §541 Property of the Estate



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In Re : In Proceedings for A
JOHNS-MANVILLE : Reorganization Under
CORPORATION, *et al.*, : Chapter 11
Debtors. :
: Case Nos. 82-B-11656
: Through 82-B-11676 (BRL)
-----X

ORDER

WHEREAS, Manville Corporation, for and on behalf of itself and each of its affiliates, Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Corporation), Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.), and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.), debtors and debtors in possession in these proceedings (collectively, "Manville"), have entered into various settlement agreements (collectively, the "Settlement Agreements"), with certain settling insurers and insurance brokers (collectively, the "Settling Insurers"), identified in the list attached hereto as Exhibit A;

WHEREAS, by applications dated August 2, 1984 and October 27, 1986 (the "Applications") Manville sought approval of the Bankruptcy Court, pursuant to Rule 9019 of the Rules of Bankruptcy Procedure, of the Settlement Agreements;

WHEREAS, upon notices duly given, hearings pursuant to Rule 9019 of the Rules of Bankruptcy Procedure were held on various aspects thereof at various dates, including November 19, 1986, to consider approval of the Settlement Agreements; and

WHEREAS, the Court has duly considered the Applications, and the testimony offered at said hearings;

IT IS HEREBY ORDERED AND ADJUDGED AND DECREED that after consideration of the foregoing and the materials referred to above:

The Settlement Agreements listed on Exhibit A hereto, and the execution, delivery and performance of such Settlement Agreements by Manville, are hereby approved pursuant to Rule 9019 of the Rules of Bankruptcy Procedure.

1. IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED with respect to the Settlement Agreement dated as of November 22, 1985, between The Aetna Casualty and Surety Company, on the one hand, and Manville Corporation, et al., on the other hand, that:

1.1 *Definitions.* As used in this Paragraph and Paragraph 1.2 below, the following defined terms have the following meanings:

“Affiliate” of another Person means any Person directly or indirectly controlling, controlled by, or under common control with, such other Person. The term “controlling” (including, with correlative meaning, the terms “controlled by” or “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

“Code” means the laws of the United States relating to bankruptcy or reorganization, including, without limitation, Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended.

“Final Order” means a judgment, order or other decree approved or entered by any State or Federal Court (including, without limitation, this Court) located in one of the States, or the District of Columbia, which judgment, order or other decree has not been reversed or stayed and as to which the time to appeal has expired and as to which no appeal, petition for rehearing or petition for certiorari is pending (or if such appeal has been filed or any such petition has been granted, it has been finally decided and such judgment, order or other decree has not been reversed or stayed).

“JCP No. 1072” means Judicial Council Proceeding No. 1072, presently pending in the Superior Court of the State of California, County of San Francisco, which includes the JM Included Action.

“JM Debtors” means Johns-Manville Corporation and each of its Affiliates which filed a petition for reorganization under Chapter 11 of the Code with this Court on August 26, 1982, unless such corporation has had or will have a plan of reorganization confirmed by an order of this Court which is a Final Order prior to the Plan Confirmation Date.

“JM Group” means the JM Insureds and the present, former and future directors, officers and employees of one or more JM Insureds.

“Policy Claims” means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be, asserted by any Person against any or all members of the JM Group or against any or all members of the Settling Insurer Group based upon, arising out of or relating to the Policies.

“JM Included Action” means that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against the Settling Insurer with respect to the Policies and the allegations and claims of the Settling Insurer against the JM Plaintiffs with respect to the Policies.

“JM Insureds” means Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) who was or is an Affiliate of Manville Corporation or Johns-Manville Corporation.

“JM Plaintiffs” means Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Corporation), Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.) and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.), each of which is named plaintiff in JCP No. 1072.

“Person” means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof.

“Plan” means the Second Amended and Restated Plan of Reorganization of Manville Corporation dated August 22, 1986, as filed with this Court on June 4, 1986, as it may be amended, modified or superseded from time to time, in the form in which it is confirmed by a Final Order of this Court.

“Plan Confirmation Date” means the date on which the Plan Confirmation Order becomes a Final Order.

“Plan Confirmation Order” means the order entered by this Court confirming the Plan.

“Policies” mean the following insurance policies (and only the following insurance policies) issued by the Settling Insurer to the JM Insureds:

<i>Policy Number</i>	<i>Policy Periods (for information only)</i>
01 XN 773 WCA	7/01/75—7/01/76
01 AI 260802 SRA	7/01/76—7/01/77
01 XN 1053 WCA	7/01/76—7/01/77
985 LG 30516 SRA	7/01/76—7/01/77
01 XN 1405 WCA	7/01/77—7/01/78

"Settlement Agreement" means the Settlement Agreement dated as of November 22, 1985, between the Settling Insurer, on the one hand, and Manville Corporation, et al., on the other hand.

"Settlement Amount" means Fourteen Million Two Hundred Fifty Thousand Dollars (\$14,250,000), consisting of three installment payments as described in the Settlement Agreement.

"Settlement Fund" means the Settlement Amount, or any portion thereof that has been deposited as an installment payment of the Settlement Amount, upon deposit with (or in accordance with the written instructions of) the Clerk of this Court in accordance with the provisions of Paragraph 2 of the Settlement Agreement, and all investment income thereon and gains or losses attributable thereto after any such deposit.

"Settling Insurer" means The Aetna Casualty and Surety Company.

"Settling Insurer Group" means the Settling Insurer and each of its present, former and future directors, officers, and employees.

Where the context so requires, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

1.2 Orders.

(A) The disposition of the Settlement Fund is subject to the jurisdiction and further order of this Court;

(B) any and all claims, charges or encumbrances which might otherwise have been assessable or assertable by any Person against or with respect to the JM Group's rights and interests based upon, arising out of or related to any or all of the Policies, and any and all claims or causes of action in law, equity, admiralty or otherwise based upon, arising out of, or related to any or all of the Policies or which were or are assessable or assertable by any Person against any or all of the Policies or any or all members of the Settling Insurer Group, are transferred, and shall attach, solely to the Settlement Fund;

(C) upon payment by the Settling Insurer of its Settlement Amount in accordance with the terms and provisions of the Settlement Agreement, the Settling Insurer and its Settling Insurer Group shall have no further duties or obligations based upon, arising out of or related to the Policies and shall thereafter be released from any and all Policy Claims by any Person, and all of the Policies of any or all members of such Settling Insurer Group shall, upon such payment, be exhausted by payment of such Settlement Amount, and shall thereupon be null and void and of no further force or effect;

(D) all Persons are restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type of nature for Policy Claims against any or all members of the Settling Insurer Group, (it being understood that cross-claims which are unrelated to Policy Claims and which are asserted by any party to JCP No. 1072 against the Settling Insurer are excluded from this clause (D)), except that no Person who asserted prior to the date this Order becomes a Final Order a claim or cause of action against one or more of the Settling Insurer Group seeking any and all damages (other than or in addition to policy proceeds) for bad faith or other insurer misconduct alleged in connection with the handling or disposition of claims is enjoined from proceeding only with respect to such claim or cause of action; *provided, however*, that any Person who (i) asserts such a claim or cause of action where the alleged act or acts or failure or failures to act upon which such claim or cause of action is based arose after the date of this Order and/or who (ii) asserts a claim or cause of action against the Settlement Fund or files a proof of claim for, or receives, a payment under the Plan is so restrained and enjoined from commencing or continuing any such action against any or all members of the Settling Insurer Group; and

(E) upon payment by the Settling Insurer of its Settlement Amount in accordance with the terms and provisions of the Settlement Agreement, the JM Plaintiffs are authorized to dismiss, unconditionally and with prejudice (unless the Settlement Agreement shall otherwise be terminated in accordance with its terms), both of the following: (i) the claims of the JM Plaintiffs against the Settling Insurer asserted or assertable in the JM Included Action, and (ii) the JM Included Action itself.

2. IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED with respect to the Settlement Agreement dated as of March 26, 1986 between The Aetna Casualty and Surety Company, on the one hand, and Manville Corporation, et al., on the other hand, that:

2.1 *Definitions.* As used in this Paragraph and Paragraph 2.2 below, the following defined terms have the following meanings:

"Affiliate" of another Person means any Person directly or indirectly controlling, controlled by, or under common control with, such other Person. The term "controlling" (including, with correlative meaning, the terms "controlled by" or "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether

through the ownership of securities, by contract or otherwise.

"Code" means the laws of the United States relating to bankruptcy or reorganization, including, without limitation, Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended.

"Final Order" means a judgment, order or other decree approved or entered by any State or Federal Court (including, without limitation, this Court) located in one of the States, or the District of Columbia, which judgment, order or other decree has not been reversed or stayed and as to which the time to appeal has expired and as to which no appeal, petition for rehearing or petition for certiorari is pending (or if such appeal has been filed or any such petition has been granted, it has been finally decided and such judgment, order or other decree has not been reversed or stayed).

"JCP No. 1072" means Judicial Council Proceeding No. 1072, presently pending in the Superior Court of the State of California, County of San Francisco, which includes the JM Included Action.

"JM Debtors" means Johns-Manville Corporation and each of its Affiliates which filed a petition for reorganization under Chapter 11 of the Code with this Court on August 26, 1982, unless such corporation has had or will have a plan of reorganization confirmed by an order of this Court which is a Final Order prior to the Plan Confirmation Date.

"JM Group" means the JM Insureds and the present, former and future directors, officers and employees of one or more JM Insureds.

"JM Included Action" means that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against the Settling Insurer with respect to the Policies and the allegations and claims of the Settling Insurer against the JM Plaintiffs with respect to the Policies.

"JM Insureds" means Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) who was or is an Affiliate of Manville Corporation or Johns-Manville Corporation.

"JM Plaintiffs" means Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Corporation), Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.) and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.), each of which is named plaintiff in JCP No. 1072.

"Person" means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof.

"Plan" means the First Amended and Restated Plan of Reorganization, dated February 14, 1986, of the JM Debtors, as filed with this Court on February 14, 1986, and as amended, modified or superseded from time to time, in the form in which it is confirmed by a Final Order of this Court.

"Plan Confirmation Date" means the date on which the Plan Confirmation Order becomes a Final Order.

"Plan Confirmation Order" means the order entered by this Court confirming the Plan.

"Policies" mean the following insurance policies (and only the following insurance policies) issued by the Settling Insurer to the JM Insureds:

<i>Policy Number</i>	<i>Policy Periods (for information only)</i>
01 XN 1913 WCA	7/01/78—7/01/79
01 XN 2284 WCA	7/01/79—7/01/80

"Policy Claims" means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be, asserted by any Person against any or all members of the JM Group or against any or all members of the Settling Insurer Group based upon, arising out of or relating to the Policies.

"Settlement Agreement" means the Settlement Agreement dated as of March 26, 1986, between the Settling Insurer, on the one hand, and Manville Corporation, et al., on the other hand.

"Settlement Amount" means Five Million Eight Hundred Thousand Dollars (\$5,800,000).

"Settlement Fund" means the Settlement Amount upon deposit with (or in accordance with the written instructions of) the Clerk of this Court in accordance with the provisions of Paragraph 2 of the Settlement Agreement, and all investment income thereon and gains or losses attributable thereto after any such deposit.

"Settling Insurer" means The Aetna Casualty and Surety Company.

"Settling Insurer Group" means the Settling Insurer and each of its present, former and future directors, officers, and employees.

Where the context so requires, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

2.2 Orders.

(A) The disposition of the Settlement Fund is subject to the jurisdiction and further order of this Court;

(B) any and all claims, charges or encumbrances which might otherwise have been assessable or assertable by any Person against or with respect to the JM Group's rights and interests based upon, arising out of or related to any or all of the Policies, and any and all claims or causes of action in law, equity, admiralty or otherwise based upon, arising out of, or related to any or all of the Policies or which were or are assessable or assertable by any Person against any or all of the Policies or any or all members of the Settling Insurer Group, are transferred, and shall attach, solely to the Settlement Fund;

(C) upon payment by the Settling Insurer of its Settlement Amount in accordance with the terms and provisions of the Settlement Agreement, the Settling Insurer and its Settling Insurer Group shall have no further duties or obligations based upon, arising out of or related to the Policies and shall thereafter be released from any and all Policy Claims by any Person, and all of the Policies of any or all members of such Settling Insurer Group shall, upon such payment, be exhausted by payment of such Settlement Amount, and shall thereupon be null and void and of no further force or effect;

(D) all Persons are restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type of nature for Policy Claims against any or all members of the Settling Insurer Group (it being understood that cross-claims which are unrelated to Policy Claims and which are asserted by any party to JCP No. 1072 against the Settling Insurer are excluded from this clause (D)), except that no Person who asserted prior to the date this Order becomes a Final Order a claim or cause of action against one or more of the Settling Insurer Group seeking any and all damages (other than or in addition to policy proceeds) for bad faith or other insurer misconduct alleged in connection with the handling or disposition of claims is enjoined from proceeding only with respect to such claim or cause of action; *provided, however*, that any Person who (i) asserts such a claim or cause of action where the alleged act or acts or failure or failures to act upon which such claim or cause of action is based arose after the date of this Order and/or who (ii) asserts a claim or cause of action against the Settlement Fund or files a proof of claim for, or receives, a payment under the Plan is so restrained and enjoined from commencing or continuing any such action against any or all members of the Settling Insurer Group; and

(E) upon payment by the Settling Insurer of its Settlement Amount in accordance with the terms and provisions of the Settle-

ment Agreement, the JM Plaintiffs are authorized to dismiss, unconditionally and with prejudice (unless the Settlement Agreement shall otherwise be terminated in accordance with its terms), both of the following: (i) the claims of the JM Plaintiffs against the Settling Insurer asserted or assertable in the JM Included Action, and (ii) the JM Included Action itself.

3. IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED with respect to the Settlement Agreement dated as of October 7, 1986 between AIU Insurance Company, Granite State Insurance Company, Lexington Insurance Company and National Union Fire Insurance Company of Pittsburgh, PA, on the one hand, and Manville Corporation, et al., on the other hand, that:

3.1 *Definitions.* As used in this Paragraph and Paragraph 3.2 below, the following defined terms have the following meanings:

"Affiliate" of another Person means any Person directly or indirectly controlling, controlled by, or under common control with, such other Person. The term "controlling" (including, with correlative meaning, the terms "controlled by" or "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

"Bond" means the Bond, dated October 8, 1986, issued by American Home Assurance Company in favor of Manville Corporation and the JM Plaintiffs in connection with the Settlement Agreement.

"Dismissal Agreement" means the "Agreement for Dismissal of Litigation in Contemplation of Settlement" dated as of October 7, 1986, between the JM Plaintiffs and the Settling Insurers with respect to the JM Included Action.

"Final Order" means a judgment, order or other decree approved or entered by any State or Federal Court (including without limitation, this Court) located in one of the States, or the District of Columbia, which judgment, order or other decree has not been reversed or stayed and as to which the time to appeal has expired and as to which no appeal, petition for rehearing or petition for certiorari is pending (or if such appeal has been filed or any such petition has been granted, it has been finally decided and such judgment, order or other decree has not been reversed or stayed).

"JCP No. 1072" means Judicial Council Proceeding No. 1072, presently pending in the Superior Court of the State of California, City and County of San Francisco, which includes the JM Included Action.

“JM Group” means the JM Insureds and the present, former and future directors, officers and employees of each of one or more JM Insureds.

“JM Included Action” means that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against the Settling Insurers with respect to the Policies and the allegations and claims of the Settling Insurers against the JM Plaintiffs with respect to the Policies.

“JM Insureds” means Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) who was or is an Affiliate of Manville Corporation or Johns-Manville Corporation.

“JM Plaintiffs” means Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Corporation), Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.) and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.), each of which is named plaintiff in JCP No. 1072.

“Person” means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof.

“Plan” means the revised form of the Second Amended and Restated Plan of Reorganization of Manville Corporation dated May 23, 1986, as filed with this Court on June 4, 1986, as it may be amended, modified or superseded from time to time, in the form in which it is confirmed by a Final Order of this Court.

“Plan Confirmation Order” means the order entered by this Court confirming the Plan.

“Policies” mean the following insurance policies (and only the following insurance policies) issued by the Settling Insurer to the JM Insureds:

<i>Policy Number</i>	<i>Policy Periods (for information only)</i>
Issued by AIU Insurance Company:	
75 100718	7/01/78—7/01/79
75 100719	7/01/78—7/01/79
75 101097	7/01/79—7/01/80
75 101098	7/01/79—7/01/80

Issued by Granite State Insurance Company:

80 93032	7/01/76—7/01/77
80 93033	7/01/76—7/01/77
80 93260	7/01/77—7/01/78
80 93261	7/01/77—7/01/78
6179 1514	7/01/79—7/01/80

Issued by Lexington Insurance Company:

GC 550 4610	7/01/75—7/01/76
GC 550 3055	7/01/76—7/01/77
GC 550 6117	7/01/77—7/01/78
551 1324	7/01/78—7/01/79
551 1483	7/01/79—7/01/80

Issued by National Union Fire Insurance Company of
Pittsburgh, PA:

118 5191	7/01/76—7/01/77
122 8559	7/01/77—7/01/78
122 8560	7/01/77—7/01/78
122 8561	7/01/77—7/01/78
123 1971	7/01/78—7/01/79
978 2326	7/01/79—7/01/80

“Policy Claims” means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be, asserted by any Person against any or all members of the JM Group or against any or all members of the Settling Insurer Group based upon, arising out of or relating to the Policies.

“Policyholder Releases” means the releases to be executed by Manville Corporation on behalf of itself and each other JM Insured and their respective successors and assigns and by each of the JM Plaintiffs on behalf of itself and its successors and assigns, in substantially the form attached to the Settlement Agreement as Exhibit B.

“Settlement Agreement” means the Settlement Agreement dated as of October 7, 1986, between the Settling Insurer, on the one hand, and Manville Corporation, et al., on the other hand.

“Settlement Amount” means Forty-Four Million Four Hundred Thousand Dollars (\$44,400,000).

“Settlement Fund” means the Settlement Amount, together with any amounts paid by the Settling Insurers pursuant to Paragraph 5 of the Settlement Agreement, upon deposit of such amounts with (or in accordance with the written instructions of) the Clerk of this Court in accordance with the provisions of Paragraph 2 of the Settlement Agreement, and all investment income thereon and gains or

losses attributable thereto after any such deposit.

“Settling Insurer” means any one of (i) AIU Insurance Company, (ii) Granite State Insurance Company, (iii) Lexington Insurance Company, and (iv) National Union Fire Insurance Company of Pittsburgh, PA.

“Settling Insurer Group” means the Settling Insurers and each of their respective present and former Affiliates and present, former and future directors, officers, and employees. The “Settling Insurer Group” of a Settling Insurer means the Settling Insurer and its present and former Affiliates and its present, former and future directors, officers and employees.

“Settling Insurer Release” means a release executed by a Settling Insurer on behalf of itself and its successors and assigns, substantially in the form attached to the Settlement Agreement as Exhibit C.

Where the context so requires, each defined area stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

3.2 Orders.

(A) The disposition of the Settlement Fund and the resolution of all disputes concerning the interpretation and enforcement of this Settlement Agreement, the Dismissal Agreement, the Bond, the Policyholder Releases and the Settling Insurer Releases are subject to the jurisdiction and further order of this Court;

(B) unless and until the Settlement Agreement terminates, any and all claims, charges or encumbrances which might otherwise have been assessable or assertable by any Person against or with respect to the JM Group’s rights and interests based upon, arising out of or related to the Policies, and any and all claims or causes of action in law, equity, admiralty or otherwise based upon, arising out of, or related to the Policies or which were or are assessable or assertable by any Person against the Policies or any or all members of the Settling Insurer Group, are transferred, and shall attach, solely to the Settlement Fund;

(C) unless and until the Settlement Agreement terminates, upon payment by the Settling Insurers of the Settlement Amount in accordance with the terms and provisions of the Settlement Agreement, the Settling Insurers and the Settling Insurer Group shall have no further duties or obligations based upon, arising out of or related to the Policies (including but not limited to excess workers’s compensation liability, property damage liability, general liability and any and all other liability), and shall thereafter be released from any and all Policy Claims by any Person, and the Policies shall, upon such payment, be exhausted by payment of the Settlement

Amount and shall thereupon be null and void and of no further force or effect;

(D) unless and until the Settlement Agreement terminates, all Persons are restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type or nature with respect to Policy Claims against any or all members of the Settling Insurer Group (it being understood that cross-claims which are unrelated to Policy Claims and which are asserted by any party to JCP No. 1072 against the Settling Insurers are excluded from this clause (D)), except that no Person who asserted prior to the date this Order becomes a Final Order a claim or cause of action against one or more of the Settling Insurer Group seeking any and all damages (other than or in addition to policy proceeds) for bad faith or other insurer misconduct alleged in connection with the handling or disposition of claims is enjoined from proceeding only with respect to such claim or cause of action; *provided, however*, that any Person who (i) asserts such a claim or cause of action where the alleged act or acts or failure or failures to act upon which such claim or cause of action is based arose after the date of this Order and/or who (ii) asserts a claim or cause of action against the Settlement Fund or files a proof of claim for, or receives, a payment under the Plan is so restrained and enjoined from commencing or continuing any such action against any or all members of the Settling Insurer Group;

(E) upon payment of the Settlement Amount in accordance with the terms and provisions of the Settlement Agreement, Manville Corporation and the JM Plaintiffs shall execute and deliver the Policyholder Releases to the Settling Insurers as provided in Paragraph 2(c) (ii) of the Settlement Agreement; and

(F) upon payment of the Settlement Amount in accordance with the terms and provisions of the Settlement Agreement, the JM Plaintiffs are authorized to dismiss, unconditionally and with prejudice (unless the Settlement Agreement shall otherwise be terminated in accordance with its terms), both of the following: (i) the claims of the JM Plaintiffs against the Settling Insurers asserted or assertable in the JM Included Action, and (ii) the JM Included Action itself.

4. IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED with respect to the Settlement Agreement dated as of May 12, 1986, between American Re-Insurance Company, on the other hand, and Manville Corporation, et al., on the other hand, that:

4.1 *Definitions.* As used in this Paragraph and Paragraph 4.2 below, the following defined terms have the following meanings:

“Affiliate” of another Person means any Person directly or indirectly controlling, controlled by, or under common control with, such other Person. The term “controlling” (including, with correlative meaning, the terms “controlled by” or “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

“Code” means the laws of the United States relating to bankruptcy or reorganization, including, without limitation, Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended.

“Final Order” means a judgment, order or other decree approved or entered by any State or Federal Court (including, without limitation, this Court) located in one of the States, or the District of Columbia, which judgment, order or other decree has not been reversed or stayed and as to which the time to appeal has expired and as to which no appeal, petition for rehearing or petition for certiorari is pending (or if such appeal has been filed or any such petition has been granted, it has been finally decided and such judgment, order or other decree has not been reversed or stayed).

“JCP No. 1072” means Judicial Council Proceeding No. 1072, presently pending in the Superior Court of the State of California, City and County of San Francisco, which includes the JM Included Action.

“JM Debtors” means Johns-Manville Corporation and each of its Affiliates which filed a petition for reorganization under Chapter 11 of the Code with this Court on August 26, 1982, unless such corporation has had or will have a plan of reorganization confirmed by an order of this Court which is a Final Order prior to the Plan Confirmation Date.

“JM Group” means the JM Insureds and the present, former and future directors, officers and employees of each of one or more JM Insureds.

“JM Included Action” means that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against the Settling Insurer with respect to the Policies and the allegations and claims of the Settling Insurer against the JM Plaintiffs with respect to the Policies.

“JM Insureds” means Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) which was or is an Affiliate of Manville Corporation or Johns-Manville Corporation.

"JM Plaintiffs" means Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Corporation), Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.) and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.) each of which is named a plaintiff in JCP No. 1072.

"Person" means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof.

"Plan" means the First Amended and Restated Plan of Reorganization dated February 14, 1986, of the JM Debtors, as filed with this Court on February 14, 1986, and as amended, modified or superseded from time to time, in the form in which it is confirmed by a Final Order of this Court.

"Plan Confirmation Date" means the date on which the Plan Confirmation Order becomes a Final Order.

"Plan Confirmation Order" means the following insurance policies (and only the following insurance policies) issued by the Settling Insurer to the JM Insureds:

<i>Policy Number</i>	<i>Policy Periods (for information only)</i>
M1050173	7/1/76 - 7/1/77
M1665370	7/1/76 - 7/1/78
EUR4000021	7/1/78 - 7/1/79

"Policy Claims" means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be, asserted by any Person against any or all members of the JM Group or against any or all members of the Settling Insurer Group based upon, arising out of or relating to the Policies.

"Settlement Agreement" means the Settlement Agreement dated as of May 12, 1986, between the Settling Insurer, on the one hand, and Manville Corporation, et al., on the other hand.

"Settlement Amount" means Three Million Two Hundred Thousand Dollars (\$3,200,000).

"Settlement Fund" means the Settlement Amount upon its deposit with (or in accordance with the written instructions of) the clerk of this Court in accordance with the provisions of Paragraph 2 of the Settlement Agreement, and all investment income thereon and gains or losses attributable thereto after any such deposit.

"Settling Insurer" means American Re-Insurance Company.

"Settling Insurer Group" means the Settling Insurer and its present, former and future directors, officers, and employees.

Where the context so requires, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

4.2 Orders.

(A) Unless and until the Settlement Agreement terminates, the disposition of the Settlement Fund is subject to the jurisdiction and further order of this Court;

(B) any and all claims, charges or encumbrances which might otherwise have been assessable or assertable by any Person against or with respect to the JM Group's rights and interests based upon, arising out of or related to the Policies, and any and all claims or causes of action in law, equity, admiralty or otherwise based upon, arising out of, or related to the Policies or which were or are assessable or assertable by any Person against the Policies or any or all members of the Settling Insurer Group, are transferred, and shall attach, solely to the Settlement Fund;

(C) upon payment of the Settlement Amount in accordance with the terms and provisions of the Settlement Agreement, the Settling Insurer and its Settling Insurer Group shall have no further duties or obligations based upon, arising out of or related to the Policies and shall thereafter be released from any and all Policy Claims by any Person, and the Policies shall, upon such payment, be exhausted by payment of such Settlement Amount and shall thereupon be null and void and of no further force or effect;

(D) unless and until the Settlement Agreement terminates, all Persons are restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type or nature with respect to Policy Claims against any or all members of the Settling Insurer Group (it being understood that cross-claims which are unrelated to Policy Claims and which are asserted by any party to JCP No. 1072 against the Settling Insurer are excluded from this clause (D)), except that no Person who asserted prior to the date this Order becomes a Final Order a claim or cause of action against one or more of the Settling Insurer Group seeking any and all damages (other than or in addition to policy proceeds) for bad faith or other insurer misconduct alleged in connection with the handling or disposition of claims is enjoined from proceeding only with respect to such claim or cause of action; provided, however, that any Person who (i) asserts such a claim or cause of action where the alleged act or acts or failure or failures to act upon which such claim or cause of action is based arose after the date of this Order

and/or who (ii) asserts a claim or cause of action against the Settlement Fund or files a proof of claim for, or receives, a payment under the Plan is so restrained and enjoined from commencing or continuing any such action against any or all members of the Settling Insurer Group; and

(E) upon payment of the Settlement Amount in accordance with the terms and provisions of the Settlement Agreement, the JM Plaintiffs are authorized to dismiss, unconditionally and with prejudice (unless the Settlement Agreement shall otherwise be terminated in accordance with its terms), both of the following: (i) the claims of the JM Plaintiffs against the Settling Insurer asserted or assertable in the JM Included Action, and (ii) the JM Included Action itself.

5. IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED with respect to the Settlement Agreement dated as of September 26, 1986 between Centaur Insurance Company, on the one hand, and Manville Corporation, et al., on the other hand, that:

5.1 *Definitions.* As used in this Paragraph and Paragraph 5.2 below, the following defined terms have the following meanings:

“Affiliate” of another Person means any Person directly or indirectly controlling, controlled by, or under common control with, such other Person, but shall not include any governmental entity. As used herein, the term “governmental entity” shall include, but shall not be limited to, any municipal, local, state or federal liquidator, rehabilitator, or department of insurance. The term “controlling” (including, with correlative meaning, the terms “controlled by” or “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

“Bonds” means the U.S. Treasury-backed zero coupon bonds, commonly known as “CATS” bonds, with a maturity date of February 15, 1989, and having an aggregate face value at maturity of \$500,000, transferred to the Trust pursuant to Paragraph 2(a) of the Settlement Agreement.

“Final Order” means a judgment, order or other decree approved or entered by any State or Federal Court (including without limitation, this Court) located in one of the States, or the District of Columbia, which judgment, order or other decree has not been reversed or stayed and as to which the time to appeal has expired and as to which no appeal, petition for rehearing or petition for certiorari is pending (or if such appeal has been filed or any such petition

has been granted, it has been finally decided and such judgment, order or other decree has not been reversed or stayed).

"JCP No. 1072" means Judicial Council Proceeding No. 1072, presently pending in the Superior Court of the State of California, City and County of San Francisco, which includes the JM Included Action.

"JM Group" means the JM Insureds and the present, former and future directors, officers and employees of each of one or more JM Insureds.

"JM Included Action" means that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against the Settling Insurer with respect to the Policy and the allegations and claims of the Settling Insurer against the JM Plaintiffs with respect to the Policy.

"JM Insureds" means Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) who was or is an Affiliate of Manville Corporation or Johns-Manville Corporation.

"JM Plaintiffs" means Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Corporation), Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.) and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.), each of which is named plaintiff in JCP No. 1072.

"Person" means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof.

"Plan" means the revised form of the Second Amended and Restated Plan of Reorganization of Manville Corporation dated May 23, 1986, as filed with this Court on June 4, 1986, as it may be amended, modified or superseded from time to time, in the form in which it is confirmed by a Final Order of this Court.

"Plan Confirmation Order" means the order entered by this Court confirming the Plan.

"Policy" means policy number CU 00203 (policy period July 1, 1979-July 1, 1980) issued by the Settling Insurer to the JM Insureds:

"Policy Claims" means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be, asserted by any Person against any or all members of the JM Group or against any or all members of the Settling Insurer Group based upon, arising out of or relating to the Policy.

"Settlement Agreement" means the Settlement Agreement dated

as of September 26, 1986, between the Settling Insurer, on the one hand, and Manville Corporation, et al., on the other hand.

"Settlement Fund" means the Trust Property upon its deposit with (or in accordance with the written instructions of) the Clerk of this Court in accordance with the provisions of Paragraph 2 of the Settlement Agreement, and all investment income thereon and gains or losses attributable thereto after any such deposit.

"Settling Insurer" means the Centaur Insurance Company.

"Settling Insurer Group" means the Settling Insurer and each of its present, former and future directors, officers, and employees.

"Trust" means the trust established pursuant to Paragraphs 2(a) and 9 of the Settlement Agreement and administered pursuant to the Trust Agreement.

"Trustee" means Mellon Bank, N.A., a national banking association, the trustee under the Trust Agreement, and any successor thereto.

"Trust Agreement" means the Trust Agreement dated as of September 26, 1986, among the parties to the Settlement Agreement and the Trustee with respect to the terms and provisions governing the administration of the Trust.

"Trust Property" means (i) the Bonds, upon their transfer to the Trust, and any proceeds of the Bonds obtained by the Trustee, whether following maturity of the Bonds or otherwise; (ii) cash in the amount of \$6,000 upon the transfer of such cash to the Trust as provided in Paragraph 2(a) of the Settlement Agreement; (iii) any amounts received by the Trust pursuant to Paragraphs 5(b) or 5(c) of the Settlement Agreement; and (iv) all gain and interest and other yield on the foregoing and the proceeds thereof; *provided, however*, that "Trust Property" shall not include any of the foregoing to the extent that it is released to the Settling Insurer pursuant to Section 4(d) of the Trust Agreement.

Where the context so requires, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

5.2 Orders.

(A) The disposition of the Settlement Fund is subject to the jurisdiction and further order of this Court;

(B) unless and until the Settlement Agreement terminates, any and all claims, charges or encumbrances which might otherwise have been assessable or assertable by any Person against or with respect to the JM Group's rights and interests based upon, arising out of or related to the Policy, and any and all claims or causes of action in law, equity, admiralty or otherwise based upon, arising out of, or related to the Policy or which were or are assessable or assert-

able by any Person against the Policy or any or all members of the Settling Insurer Group, are transferred, and shall attach, solely to the Settlement Fund;

(C) unless and until the Settlement Agreement terminates, the Settling Insurer and its Settlement Insurer Group shall have no further duties or obligations based upon, arising out of or related to the Policy and shall thereafter be released from any and all Policy Claims by any Person, and the Policy shall be exhausted by delivery by the Trustee of the Trust Property to the Clerk of this Court and shall thereupon be null and void and of no further force or effect;

(D) unless and until the Settlement Agreement terminates, all Persons are restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type of nature for Policy Claims against any or all members of the Settling Insurer Group (it being understood that cross-claims which are unrelated to Policy Claims and which are asserted by any party to JCP No. 1072 against the Settling Insurer are excluded from this clause (D)), except that no Person who asserted prior to the date this Order becomes a Final Order a claim or cause of action against one or more of the Settling Insurer Group seeking any and all damages (other than or in addition to policy proceeds) for bad faith or other insurer misconduct alleged in connection with the handling or disposition of claims is enjoined from proceeding only with respect to such claim or cause of action; *provided, however*, that any Person who (i) asserts such a claim or cause of action where the alleged act or acts or failure or failures to act upon which such claim or cause of action is based arose after the date of this Order and/or who (ii) asserts a claim or cause of action against the Settlement Fund or files a proof of claim for, or receives, a payment under the Plan is so restrained and enjoined from commencing or continuing any such action against any or all members of the Settling Insurer Group; and

(E) upon delivery by the Trustee of the Trust Property to (or in accordance with the written instructions of) the Clerk of this Court in accordance with the terms and provisions of the Settlement Agreement, the JM Plaintiffs are authorized to dismiss, unconditionally and with prejudice (unless the Settlement Agreement shall otherwise be terminated in accordance with its terms), both of the following: (i) the claims of the JM Plaintiffs against the Settling Insurer asserted or assertable in the JM Included Action, and (ii) the JM Included Action itself.

6. IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED with respect to the Settlement Agreement dated as of October 20, 1986, between Commercial Union Insurance Company and the Northern Assurance Company of America, on the one hand, and Manville Corporation, et al., on the other hand, that:

6.1 *Definitions.* As used in this Paragraph and Paragraph 6.2 below, the following defined terms have the following meanings:

"Affiliate" of another Person means any Person directly or indirectly controlling, controlled by, or under common control with, such other Person. The term "controlling" (including, with correlative meaning, the terms "controlled by" or "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

"Boston Action" means Adversary Proceeding No. 82-1390, currently pending in the United States Bankruptcy Court for the District of Massachusetts, originally filed as Civil Action No. 39329 in the Superior Court Department of the Commonwealth of Massachusetts in and for the County of Suffolk, in whatever forum it may hereafter reside.

"JCP No. 1072" means Judicial Council Proceeding No. 1072, presently pending in the Superior Court of the State of California, County of San Francisco, which includes the JM Included Action.

"JM Defendants" means Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Corporation) and Johns-Manville International Corporation, each of which is a named defendant in the Boston Action.

"JM Group" means the JM Insureds and the present, former and future directors, officers and employees of one or more JM Insureds.

"JM Included Action" means that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against the Settling Insurers (or either of them) with respect to the Policies and the allegations and claims of the Settling Insurers (or either of them) against the JM Plaintiffs with respect to the Policies.

"JM Insureds" means Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) who was or is an Affiliate of Manville Corporation or Johns-Manville Corporation.

"JM Plaintiffs" means Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Corporation), Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.) and Johns-

Manville Amiante Canada Inc. (now known as JM Asbestos Inc.), each of which is named plaintiff in JCP No. 1072.

“Person” means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof.

“Policies” mean the following insurance policies issued by the Settling Insurers (or either of them) to the JM Insureds:

<i>Policies</i>	<i>Policy Periods (for information only)</i>
All insurance policies as determined by the jury in Phase I of JCP No. 1072, as set forth on Exhibit G-1 attached to the Settlement Agreement	1/1/34—7/1/45
0-312500	7/1/45—7/1/48
0-312501	7/1/45—7/1/48
0-334350	7/1/46—7/1/49
0-334351	7/1/46—7/1/51
S-10497(on policy form ES9024-1, as determined by the jury in Phase I of JCP No. 1072, as set forth on Exhibit G-2 attached to the Settlement Agreement)	7/1/60—7/1/63
E16 8232-001	3/18/66—7/1/69
E16 8232-002	3/18/66—7/1/69
EY 8232-004	7/1/69—7/1/72
EY 8232-005	7/1/69—7/1/72

“Policy Claims” means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be, asserted by any Person against any or all members of the JM Group or against any or all members of the Settling Insurer Group based upon, arising out of or relating to the Policies.

“Settlement Agreement” means the Settlement Agreement dated as of October 20, 1986, between the Settling Insurers, on the one hand, and Manville Corporation, et al., on the other hand.

“Settlement Amount” means Twenty-Seven Million One Hundred Thousand Dollars (U.S. \$27,100,000), consisting of four installment payments as described in the Settlement Agreement.

“Settlement Fund” means the Settlement Amount, together with any amounts paid by the Settling Insurers pursuant to Paragraph 5 of the Settlement Agreement, upon deposit of such amounts with (or in accordance with the written instructions of) the Clerk of this Court in accordance with the provisions of the Settlement Agreement, and all investment income thereon and gains or losses attributable thereto after any such deposit.

“Settling Insurers” means Commercial Union Insurance Company, a Massachusetts corporation and the successor by merger to The Employers’ Liability Assurance Corporation, Ltd.; and The Northern Assurance Company of America, a Vermont corporation and the successor to the obligations of The Employers’ Surplus Lines Insurance Company (now known as Falcon Insurance Company) under Policy No. S-10497.

“Settling Insurer Group” means the Settling Insurers and each of their respective present and former Affiliates and present, former and future directors, officers, and employees.

Where the context so requires, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

6.2 Orders.

(A) The disposition of the Settlement Fund is subject to the jurisdiction and further order of this Court;

(B) unless and until the Settlement Agreement terminates, any and all claims, charges or encumbrances which might otherwise have been assessable or assertable by any Person against or with respect to the JM Group’s rights and interests based upon, arising out of or related to the Policies, and any and all claims or causes of action in law, equity, admiralty or otherwise based upon, arising out of, or related to the Policies or which were or are assessable or assertable by any Person against the Policies or any or all members of the Settling Insurer Group, are transferred, and shall attach, solely to the Settlement Fund;

(C) unless and until the Settlement Agreement terminates, upon payment by the Settling Insurers of the Settlement Amount in accordance with the terms and provisions of the Settlement Agreement, the Settling Insurers and their Settling Insurer Group shall have no duties or obligations based upon, arising out of or related to the Policies and shall thereafter be released from any and all Policy Claims by any Person, and the Policies shall, upon such

payment, be deemed exhausted by payment of such Settlement Amount and shall thereupon be null and void and of no further force or effect;

(D) unless and until the Settlement Agreement terminates, all Persons are restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type of nature with respect to Policy Claims against any or all members of the Settling Insurer Group (it being understood that cross-claims which are unrelated to Policy Claims and which are asserted by any party to JCP No. 1072 against the Settling Insurers (or either of them) are excluded from this clause (D)), and

(E) upon payment by the Settlement Amount in accordance with the terms and provisions of the Settlement Agreement, the JM Plaintiffs are authorized to dismiss, unconditionally and with prejudice (unless the Settlement Agreement shall otherwise be terminated in accordance with its terms), all of the following: (i) the claims of the JM Plaintiffs and/or the JM Defendants against the Settling Insurers (or either of them) asserted or assertable in either the JM Included Action or the Boston Action, and (ii) the JM Included Action itself.

7. IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED with respect to the Settlement Agreement dated as of October 21, 1986, between First State Insurance Company, on the one hand, and Manville Corporation, et al., on the other hand, that:

7.1 *Definitions.* As used in this Paragraph and Paragraph 7.2 below, the following defined terms have the following meanings:

“Affiliate” of another Person means any Person directly or indirectly controlling, controlled by, or under common control with, such other Person. The term “controlling” (including, with correlative meaning, the terms “controlled by” or “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

“JCP No. 1072” means Judicial Council Proceeding No. 1072, presently pending in the Superior Court of the State of California, County of San Francisco, which includes the JM Included Action.

“JM Group” means the JM Insureds and the present, former and future directors, officers and employees of one or more JM Insureds.

“JM Included Action” means that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against

the Settling Insurer with respect to the Policy and the allegations and claims of the Settling Insurer against the JM Plaintiffs with respect to the Policies.

"JM Insureds" means Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) who is an Affiliate of Manville Corporation or Johns-Manville Corporation.

"JM Plaintiffs" means Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Corporation), Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.) and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.), each of which is named plaintiff in JCP No. 1072.

"Person" means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof.

"Policy" means policy number 922992 (policy period 7/01/76-7/01/77) issued by the Settling Insurer to the JM Insureds.

"Policy Claims" means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be, asserted by any Person against any or all members of the JM Group or against any or all members of the Settling Insurer Group based upon, arising out of or relating to the Policy.

"Settlement Agreement" means the Settlement Agreement dated as of October 21, 1986, between the Settling Insurer, on the one hand, and Manville Corporation, et al., on the other hand.

"Settlement Amount" means One Million Four Hundred Thousand U.S. Dollars (U.S. \$1,400,000).

"Settlement Fund" means the Settlement Amount upon its transfer to (or in accordance with the written instructions of) the Clerk of this Court in accordance with the provisions of Paragraph 2 of the Settlement Agreement, and all investment income thereon and gains or losses attributable thereto after any such transfer.

"Settling Insurer" means First State Insurance Company.

"Settling Insurer Group" means the Settling Insurer and its present, former and future directors, officers, and employees.

Where the context so requires, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

7.2 Orders.

(A) The disposition of the Settlement Fund is subject to the jurisdiction and further order of this Court;

(B) unless and until the Settlement Agreement terminates pursuant to Paragraph 7 thereof, any and all claims, charges or encumbrances which might otherwise have been assessable or assertable by any Person against or with respect to the JM Group's rights and interests based upon, arising out of or related to the Policy, and any and all claims or causes of action in law, equity, admiralty or otherwise based upon, arising out of, or related to the Policy or which were or are assessable or assertable by any Person against the Policy or any or all members of the Settling Insurer Group, are transferred, and shall attach, solely to the Settlement Fund;

(C) unless and until the Settlement Agreement terminates pursuant to Paragraph 7 thereof, the Settling Insurer and its Settling Insurer Group shall have no further duties or obligations based upon, arising out of or related to the Policy and shall hereafter be released from any and all Policy Claims by any Person, and the Policy shall be exhausted by the transfer of the Settlement Amount to (or in accordance with the instructions of) the Clerk of this Court and shall thereupon be null and void and of no further force or effect;

(D) unless and until the Settlement Agreement terminates pursuant to Paragraph 7 thereof, all Persons are restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type or nature with respect to Policy Claims against any or all members of the Settling Insurer Group (it being understood that cross-claims which are unrelated to Policy Claims and which are asserted by any party to JCP No. 1072 against the Settling Insurer are excluded from this clause (D)); and

(E) upon the transfer of the Settlement Amount (and any interest payable pursuant to Paragraph 2(e) of the Settlement Agreement) to (or in accordance with the written instructions of) the Clerk of this Court in accordance with the terms and provisions of the Settlement Agreement, the JM Plaintiffs are authorized to dismiss, unconditionally and with prejudice (unless the Settlement Agreement shall otherwise be terminated in accordance with its terms), both of the following: (i) the claims of the JM Plaintiffs against the Settling Insurer asserted or assertable in the JM Included Action, and (II) the JM Included Action itself.

8. IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECRED with respect to the Settlement Agreement dated as of March 27, 1986, between Gibraltar Casualty Company, on the one hand, and Manville corporation, et al., on the other hand, that:

8.1 *Definitions.* As used in this Paragraph and Paragraph 8.2 below, the following defined terms have the following meanings:

“Affiliate” of another Person means any Person directly or indirectly controlling, controlled by, or under common control with, such other Person. The term “controlling” (including, with correlative meaning, the terms “controlled by” or “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

“Code” means the laws of the United States relating to bankruptcy or reorganization, including, without limitation, Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended.

“Effective Date” means March 27, 1986.

“Final Order” means a judgment, order or other decree approved or entered by any State or Federal Court (including, without limitation, this Court) located in one of the States, or the District of Columbia, which judgment, order or other decree has not been reversed or stayed and as to which the time to appeal has expired and as to which no appeal, petition for rehearing or petition for certiorari is pending (or if such appeal has been filed or any such petition has been granted, it has been finally decided and such judgment, order or other decree has not been reversed or stayed).

“JCP No. 1072” means Judicial Council Proceeding No. 1072, presently pending in the Superior Court of the State of California, City and County of San Francisco, which includes the JM Included Action.

“JM Debtors” means Johns-Manville Corporation and each of its Affiliates which filed a petition for reorganization under Chapter 11 of the Code with this Court on August 26, 1982, unless such corporation has had or will have a plan of reorganization confirmed by an order of this Court which is a Final Order prior to the Plan Confirmation Date.

“JM Group” means the JM Insureds and the present, former and future directors, officers and employees of each of one or more JM Insureds.

“JM Included Action” means that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against the Settling Insurer with respect to the Policy and the allegations and claims of the Settling Insurer against the JM Plaintiffs with respect to the Policy.

“JM Insureds” means Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) which was or is an

Affiliate of Manville Corporation or Johns-Manville Corporation.

"JM Plaintiffs" means Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Corporation), Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.) and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.) each of which is named a plaintiff in JCP No. 1072.

"Person" means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof.

"Plan" means the First Amended and Restated Plan of Reorganization dated February 14, 1986, of the JM Debtors, as filed with this Court on February 14, 1986, and as amended, modified or superseded from time to time, in the form in which it is confirmed by a Final Order of this Court.

"Plan Confirmation Date" means the date on which the Plan Confirmation Order becomes a Final Order.

"Plan Confirmation Order" means the order entered by this Court confirming the Plan.

"Policy" means insurance policy number GMX 00179 issued by the Settling Insurer to the JM Insureds for the policy period July 1, 1979 to July 1, 1980.

"Policy Claims" means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be, asserted by any Person against any or all members of the JM Group or against any or all members of the Settling Insurer Group based upon, arising out of or relating to the Policy.

"Settlement Agreement" means the Settlement Agreement dated as of March 27, 1986, between the Settling Insurer, on the one hand, and Manville Corporation, et al., on the other hand.

"Settlement Amount" means One Million Nine Hundred Thirty-Seven Thousand Five Hundred Dollars (\$1,937,500).

"Settlement Fund" means the Settlement Amount upon its deposit with (or in accordance with the written instructions of) the Clerk of this Court in accordance with the provisions of Paragraph 2 of the Settlement Agreement, and all investment income thereon and gains or losses attributable thereto after any such deposit.

"Settling Insurer" means Gibraltar Casualty Company.

"Settling Insurer Group" means the Settling Insurer and its present, former and future directors, officers, and employees.

Where the context so requires, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

8.2 Orders.

(A) The disposition of the Settlement Fund is subject to the jurisdiction and further order of this Court;

(B) unless and until the Settlement Agreement terminates, any and all claims, charges or encumbrances which might otherwise have been assessable or assertable by any Person against or with respect to the JM Group's rights and interests based upon, arising out of or related to the Policy, and any and all claims or causes of action in law, equity, admiralty or otherwise based upon, arising out of, or related to the Policy or which were or are assessable or assertable by any Person against the Policy or any or all members of the Settling Insurer Group, are transferred, and shall attach, solely to the Settlement Fund;

(C) unless and until the Settlement Agreement terminates, upon the Effective Date, the Settling Insurer and its Settling Insurer Group shall have no duties or obligations after the Effective Date based upon, arising out of or related to the Policy (including, but not limited to, liability for excess workers compensation liability, property damage liability, general liability and any and all other liability) and shall thereafter be released from any and all Policy Claims by any Person, and the Policy shall thereafter be deemed exhausted and shall thereupon be null and void and of no further force or effect;

(D) unless and until the Settlement Agreement terminates, all Persons are restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type or nature with respect to Policy Claims against any or all members of the Settling Insurer Group (it being understood that cross-claims which are unrelated to Policy Claims and which are asserted by any party to JCP No. 1072 against the Settling Insurers are excluded from this clause (D)), except that no Person who asserted prior to the date this Order becomes a Final Order a claim or cause of action against one or more of the Settling Insurer Group seeking any and all damages (other than or in addition to policy proceeds) for bad faith or other insurer misconduct alleged in connection with the handling or disposition of claims is enjoined from proceeding only with respect to such claim or cause of action; *provided, however*, that any Person who (i) asserts such a claim or cause of action where the alleged act or acts or failure or failures to act upon which such claim or cause of action is based arose after the date of this Order

and/or who (ii) asserts a claim or cause of action against the Settlement Fund or files a proof of claim for, or receives, a payment under the Plan is so restrained and enjoined from commencing or continuing any such action against any or all members of the Settling Insurer Group; and

(E) upon payment of the Settlement Amount in accordance with the terms and provisions of the Settlement Agreement, the JM Plaintiffs are authorized to dismiss, unconditionally and with prejudice (unless the Settlement Agreement shall otherwise be terminated in accordance with its terms), both of the following: (i) the claims of the JM Plaintiffs against the Settling Insurer asserted or assertable in the JM Included Action, and (ii) the JM Included Action itself.

9. IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED with respect to the Settlement Agreement dated as of September 18, 1985, between Highlands Insurance Company, on the one hand, and Manville Corporation, et. al., on the other hand, that:

9.1 *Definitions.* As used in this Paragraph and Paragraph 9.2 below, the following defined terms have the following meanings:

“Affiliate” of another Person means any Parent organization, subsidiary organization, or any Person directly or indirectly controlling, controlled by, or under common control with, such other Person. The term “controlling” (including, with correlative meaning, the terms “controlled by” or “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

“Final Order” means a judgment, order or other decree approved or entered by any State or Federal Court (including, without limitation, this Court) located in one of the States, or the District of Columbia, which judgment, order or other decree has not been reversed or stayed and as to which the time to appeal has expired and as to which no appeal, petition for rehearing or petition for certiorari is pending (or if such appeal has been filed or any such petition has been granted, it has been finally decided and such judgment, order or other decree has not been reversed or stayed).

“JCP No. 1072” means Judicial Council Proceeding No. 1072, presently pending in the Superior Court of the State of California, City and County of San Francisco, which includes the JM Included Action.

"JM Debtors" means Johns-Manville Corporation and each of its Affiliates which filed a petition for reorganization under Chapter 11 of the Code with this Court on August 26, 1982, unless such corporation has had or will have a plan of reorganization confirmed by an order of this Court which is a Final Order prior to the Plan Confirmation Date.

"JM Group" means the JM Insureds and the present, former and future directors, officers and employees of each of one or more JM Insureds.

"JM Included Action" means that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against the Settling Insurer with respect to the Policy and the allegations and claims of the Settling Insurer against the JM Plaintiffs with respect to the Policy.

"JM Insureds" means Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) which was or is an Affiliate of Manville Corporation or Johns-Manville Corporation.

"JM Plaintiffs" means Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Corporation), Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.) and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.) each of which is named a plaintiff in JCP No. 1072.

"Person" means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof.

"Plan" means the Joint Plan of Reorganization, dated October 17, 1983, of the JM Debtors, as filed with the Bankruptcy Court on November 21, 1983, and as amended, modified or superseded from time to time, in the form in which it is confirmed by a Final Order of this Court.

"Plan Confirmation Date" means the date on which the Plan Confirmation Order becomes a Final Order.

"Plan Confirmation Order" means the order entered by this Court confirming the Plan.

"Policy" means insurance policy number SR 20115 (policy period July 1, 1976-July 1, 1977) issued by the Settling Insurer to the JM Insureds.

"Policy Claims" means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be, asserted by any Person against any or all members of the JM Group or against

any or all members of the Settling Insurer Group based upon, arising out of or relating to the Policy.

"Settlement Agreement" means the Settlement Agreement dated as of September 18, 1985, between the Settling Insurer, on the one hand, and Manville Corporation, et al., on the other hand.

"Settlement Amount" means Two Million Six Hundred Thousand Dollars (\$2,600,000).

"Settlement Fund" means the Settlement Amount upon its deposit with (or in accordance with the written instructions of) the Clerk of this Court in accordance with the provisions of Paragraph 2 of the Settlement Agreement, and all investment income thereon and gains or losses attributable thereto after any such deposit.

"Settling Insurer" means the Highlands Insurance Company on behalf of itself and each of its Affiliates.

"Settling Insurer Group" means the Settling Insurer and its present or former Affiliates, and each of their present, former and future directors, officers, and employees.

Where the context so requires, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

9.2 Orders.

(A) The disposition of the Settlement Fund is subject to the jurisdiction and further order of this Court;

(B) any and all claims, charges or encumbrances which might otherwise have been assessable or assertable by any Person against or with respect to the JM Group's rights and interests based upon, arising out of or related to the Policy, and any and all claims or causes of action in law, equity, admiralty or otherwise based upon, arising out of, or related to the Policy or which were or are assessable or assertable by any Person against the Policy or any or all members of the Settling Insurer Group, are transferred, and shall attach, solely to the Settlement Fund;

(C) upon payment by the Settling Insurer of its Settlement Amount in accordance with the terms and provisions of the Settlement Agreement, the Settling Insurer and its Settling Insurer Group shall have no further duties or obligations based upon, arising out of or related to the Policy and shall thereafter be released from any and all Policy Claims by any Person, and the Policy shall, upon such payment, be exhausted by payment of such Settlement Amount and shall thereupon be null and void and of no further force or effect;

(D) all Persons are restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any

type or nature for Policy Claims against any or all members of the Settling Insurer Group (it being understood that cross-claims which are unrelated to Policy Claims and which are asserted by any party to JCP No. 1072 against the Settling Insurer are excluded from this clause (D)), except that no Person who asserted prior to the date this Order becomes a Final Order a claim or cause of action against one or more of the Settling Insurer Group seeking any and all damages (other than or in addition to policy proceeds) for bad faith or other insurer misconduct alleged in connection with the handling or disposition of claims is enjoined from proceeding only with respect to such claim or cause of action; *provided, however*, that any person or entity who (i) asserts such a claim or cause of action where the alleged act or acts or failure or failures to act upon which such claim or cause of action is based arose after the date of this Order and/or who (ii) asserts a claim or cause of action against the Settlement Fund or files a proof of claim for, or receives, a payment under the Plan is so restrained and enjoined from commencing or continuing any such action against any or all members of the Settling Insurer Group; and

(E) the JM Plaintiffs are authorized to dismiss, unconditionally and with prejudice (unless the Settlement Agreement shall otherwise be terminated in accordance with its terms), both of the following: (i) the claims of the JM Plaintiffs against the Settling Insurers asserted or assertable in the JM Included Action, and (ii) the JN Included Action itself.

10. IT IS HEREBY FURTHER DETERMINED with respect to the Settlement Agreement dated as of January 29, 1985 between Insurance Company of North America, Midland Insurance Company and Allstate Insurance Company as corporate successor of Northbrook Excess & Surplus Insurance Company (formerly known as "Northbrook Insurance Company"), on the one hand, and Manville Corporation, et al., on the other hand (all capitalized terms being used as defined in Paragraph 10.1 below), that:

(1) the Settling Insurers issued or are or may be responsible for the Policies and the Policies constitute and include property of the JM Debtors' estate;

(2) serious and substantial disputes have arisen between Manville Corporation, the Settling Insurers and others concerning the availability and extent of coverage and other obligations under the Policies;

(3) on March 31, 1980, the JN Plaintiffs commenced an action in the Superior Court of the State of California, City and County of San Francisco, against the Settling Insurers and other insurers

of the JM Insureds, which action has been coordinated with other suits in JCP No. 1072;

(4) prior to the filing of the JM Debtors' petition for reorganization under Chapter 11 of the Code on August 26, 1982, lawsuits on behalf of more than 16,000 persons had been filed against the JM Group and/or its insurers, including one or more of the Settling Insurers, claiming damages for asbestos-related claims, including (but not limited to) health, personal injury or property damage claims;

(5) no fewer than 6,000 additional lawsuits would have been commenced by January 1, 1984 against the JM Group and/or its insurers, but for the provisions of 11 U.S.C. § 362(a) and the orders of this Court issued pursuant to 11 U.S.C. §§ 362(a) and 105; and

(6) the settlement provided for in the Settlement Agreement is a fair and reasonable resolution of the disputes between Manville Corporation and the JM Plaintiffs and the Settling Insurers regarding the Policies, and approval of the Settlement Agreement will materially enhance the JM Debtors' ability to successfully and effectively reorganize under Chapter 11 of the Code.

IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED with respect to the Settlement Agreement dated as of January 29, 1985, between Insurance Company of North America, Midland Insurance Company and Allstate Insurance Company as corporate successor of Northbrook Excess & Surplus Insurance Company (formerly known as "Northbrook Insurance Company"), on the one hand, and Manville Corporation, et al., on the other hand, that:

10.1 *Definitions.* As used in this Paragraph and Paragraph 10.2 below, the following defined terms have the following meanings:

"Affiliate" of another Person means any Person directly or indirectly controlling, controlled by, or under common control with, such other Person. The term "controlling" (including, with correlative meaning, the terms "controlled by" or "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

"Aggregate Limit of Liability" means (subject to increase or reinstatement in accordance with the provisions of Paragraph 5 of the Settlement Agreement) Thirty-Seven Million Dollars (\$37,000,000) as to INA, Forty-Six Million Seven Hundred Fifty Thousand Dollars (\$46,750,000) as to Midland and Twenty-Eight

Million Fifty Thousand Dollars (\$28,050,000) as to Allstate.

"Allstate" means Allstate Insurance Company as corporate successor of Northbrook Excess & Surplus Insurance Company (formerly known as "Northbrook Insurance Company").

"Dismissal Agreement" means the "Agreement for Dismissal of Litigation in Contemplation of Settlement" entered into by the parties to the Settlement Agreement substantially in the form of Exhibit A thereto.

"Dismissals" means the Dismissals with Prejudice and the Dismissals Without Prejudice provided for in the Dismissal Agreement.

"Final Order" means a judgment, order or other decree approved or entered by any State or Federal court (including, without limitation, this Court) located in one of the States, or the District of Columbia, which judgment, order or other decree has not been reversed or stayed and (i) as to which no appeal, petition for hearing or rehearing or petition for certiorari is pending, or (ii) as to which no further appeal, petition for hearing or rehearing or petition for certiorari is permitted.

"INA" means Insurance Company of North America.

"JCP No. 1072" means Judicial Council Coordination Proceeding No. 1072, presently pending in the Superior Court of the State of California, City and County of San Francisco, which includes the JM/Marsh Action.

"JM/Marsh Action" means all of the allegations and claims of the parties to *Johns-Manville Corporation, et al. v. The Home Insurance Company, et al.*, Docket No. 765226, and *Johns-Manville Corporation, et al. v. Marsh & McLennan, Incorporated, et al.*, Docket No. 787776, each of which is included in JCP No. 1072, and includes the JM Included Action.

"JM Debtors" means Johns-Manville Corporation and each of its Affiliates which filed a petition for reorganization under Chapter 11 of the Code with this Court on August 26, 1982, unless such corporation has had or will have a plan of reorganization confirmed by an order of this Court which is a Final Order prior to the Plan Confirmation Date.

"JM Employees" means present, former or future directors, officers and employees of one or more of the JM Insureds.

"JM Group" means the JM Insureds and the JM Employees.

"JM Included Action" means that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against the Settling Insurers and the allegations and claims of the Settling Insurers against the JM Plaintiffs, or any other Settling Insurer;

provided, however, that "JM Included Action" shall not include that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against Midland and the allegations and claims of Midland against the JM Plaintiffs relating to Midland Policy No. XL 147541 for the policy period July 1, 1979-July 1, 1980.

"JM Insureds" means Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) who was or is an Affiliate of Manville Corporation or Johns-Manville Corporation.

"JM Plaintiffs" means "Johns-Manville Corporation, Johns-Manville Sales Corporation, Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.) and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.), each of which is a named plaintiff in JCP No. 1072.

"JM Releases" means the releases to be executed by Manville Corporation and each of the JM Plaintiffs on behalf of themselves and each other JM Insured and their respective successors and assigns, in substantially the form attached to the Settlement Agreement as Exhibit B.

"Midland" means Midland Insurance Company.

"Person" means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof.

"Plan" means the Joint Plan of Reorganization, dated October 17, 1983, of the JM Debtors, as filed with this Court on November 23, 1983, and as amended, modified or superseded from time to time, in the form in which it is confirmed by an order of this Court which is a Final Order.

"Plan Confirmation Date" means the date on which the Plan Confirmation Order becomes a Final Order.

"Plan Confirmation Order" means the order entered by this Court confirming the Plan.

"Policies" means the following insurance policies (and only the following insurance policies) issued by the Settling Insurers to the JM Insureds:

<i>Settling Insurer</i>	<i>Policy Number</i>	<i>Policy Periods (for information only)</i>
INA	XCP 3530	3/18/66-7/01/69
	XCP 3628	7/01/69-7/01/72
Midland	XL 2184	3/03/72-7/01/72
	XL 2504 & XL 2505	7/01/72-7/01/75

Allstate	63 000 928	7/01/75-7/01/76
	63 001 943	7/01/76-7/01/77
	63 003 297	7/01/77-7/01/78
	63 003 298	7/01/77—7/01/78

provided, however, that the term "Policies" does not and shall not include any coverage which may exist in the above listed insurance policies for statutory workers' compensation, as referred to in Paragraph 8 of the Settlement Agreement.

"Policy Claims" means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be, asserted by any Person against any or all members of the JM Group or against any or all members of the Settling Insurer Group based upon, arising out of, or relating to, any or all of the Policies.

"Settlement Agreement" means the Settlement Agreement dated as of January 29, 1985, between the Settling Insurers, on the one hand, and Manville Corporation, et al., on the other hand.

"Settling Insurer" means any one of (i) INA, (ii) Midland, and (iii) Allstate.

"Settling Insurer Group" means the Settling Insurers and their respective present, former or future directors, officers and employees. The "Settling Insurer Group" of a Settling Insurer means such Settling Insurer and its respective present, former or future directors, officers and employees.

"Settling Insurers" means INA, Midland, and Allstate.

Where the context so requires, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

10.2 Orders.

(A) The Settlement Agreement is, in all respects, approved, and the execution, delivery and performance of the Settlement Agreement and certain other documents referred to therein (including, without limitation, the Dismissal Agreement, the Dismissals and the JM Releases) by Manville Corporation on behalf of itself and its Affiliates and by each of the JM Plaintiffs are hereby ratified and confirmed, and such parties are hereby authorized to execute and/or deliver such additional documents (as may be provided for in the Settlement Agreement) and do such things as may be necessary to perform, implement and effectuate the Settlement Agreement and this Order;

(B) at and after the date of this Order, each Settling Insurer as to which the Settlement Agreement has not been terminated shall have no duties or obligations to any Person based upon, arising

out of or related to any or all the Policies. except as may be imposed by the Settlement Agreement;

(C) upon payment by any Settling Insurer as to which the Settlement Agreement has not been terminated of an aggregate amount equal to its Aggregate Limit of Liability in accordance with the terms and provisions of the Settlement Agreement, such Settling Insurer and its Settling Insurer Group shall have no further duties or obligations based upon, arising out of or related to the Policies and shall thereafter be released from any and all Policy Claims by any Person, and all of the Policies of any or all members of such Settling Insurer Group shall upon such performance be deemed exhausted and shall thereupon be null and void and of no further force or effect;

(D) all Persons are permanently restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type or nature for Policy Claims against any or all members of the Settling Insurer Group of any Settling Insurer as to which the Settlement Agreement has not been terminated (it being understood that cross-claims which are unrelated to Policy Claims and which are asserted by any party to JCP No. 1072 against the Settling Insurers are not so enjoined); and

(E) upon payment by any Settling Insurer as to which the Settlement Agreement has not been terminated of an amount equal to its Aggregate Limit of Liability in accordance with the terms and provisions of the Settlement Agreement, the dismissal, unconditionally and with prejudice, of both: (i) the claims between the JM Plaintiffs, on the one hand, and such Settling Insurer, on the other hand, asserted or assertable in the JM Included Action, and (ii) the JM Included Action (with respect to such claims) itself, is hereby approved and authorized.

11. IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED with respect to the Settlement Agreement dated as of February 20, 1986, between INSCO Ltd., on the one hand, and Manville Corporation, et al., on the other hand, that:

11.1 *Definitions.* As used in this Paragraph and Paragraph 11.2 below, the following defined terms have the following meanings:

"Affiliate" of another Person means any Person directly or indirectly controlling, controlled by, or under common control with, such other Person. The term "controlling" (including, with correlative meaning, the terms "controlled by" or "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direc-

tion of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

"Code" means the laws of the United States relating to bankruptcy or reorganization, including, without limitation, Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended.

"Effective Date" means February 20, 1986.

"Final Order" means a judgment, order or other decree approved or entered by any State or Federal Court (including, without limitation, this Court) located in one of the States, or the District of Columbia, which judgment, order or other decree has not been reversed or stayed and as to which the time to appeal has expired and as to which no appeal, petition for rehearing or petition for certiorari is pending (or if such appeal has been filed or any such petition has been granted, it has been finally decided and such judgment, order or other decree has not been reversed or stayed).

"JCP No. 1072" means Judicial Council Proceeding No. 1072, presently pending in the Superior Court of the State of California, County of San Francisco, which includes the JM Included Action.

"JM Debtors" means Johns-Manville Corporation and each of its Affiliates which filed a petition for reorganization under Chapter 11 of the Code with this Court on August 26, 1982, unless such corporation has had or will have a plan of reorganization confirmed by an order of this Court which is a Final Order prior to the Plan Confirmation Date.

"JM Group" means the JM Insureds and the present, former and future directors, officers and employees of each of one or more JM Insureds.

"JM Included Action" means that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against the Settling Insurer with respect to the Policy and the allegations and claims of the Settling Insurer against the JM Plaintiffs with respect to the Policy.

"JM Insureds" means Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) who was or is an Affiliate of Manville Corporation or Johns-Manville Corporation.

"JM Plaintiffs" means Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Corporation), Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.) and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.), each of which is a named plaintiff in JCP No. 1072.

"Person" means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including,

without limitation, any government or political subdivision or an agency or instrumentality thereof.

"Plan" means the Joint Plan of Reorganization dated October 17, 1983, of the JM Debtors, as filed with this Court on November 21, 1983, and as amended, modified or superseded from time to time, in the form in which it is confirmed by a Final Order of this Court.

"Plan Confirmation Date" means the date on which the Plan Confirmation Order becomes a Final Order.

"Plan Confirmation Order" means the order entered by this Court confirming the Plan.

"Policy" means policy number MLI 1309 (policy period July 1, 1979-July 1, 1980) issued by the Settling Insurer to the JM Insureds.

"Policy Claims" means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be asserted by any Person against any or all members of the JM Group or against any or all members of the Settling Insurer Group based upon, arising out of or relating to the Policy.

"Settlement Agreement" means the Settlement Agreement dated as of February 20, 1986, between the Settling Insurer, on the one hand, and Manville Corporation, et al., on the other hand.

"Settlement Amount" means Three Hundred Eighty-Seven Thousand Five Hundred Dollars (\$387,500).

"Settlement Fund" means the Settlement Amount upon its deposit with (or in accordance with the written instructions of) the Clerk of this Court in accordance with the provisions of Paragraph 2 of the Settlement Agreement, and all investment income thereon and gains or losses attributable thereto after any such deposit.

"Settling Insurer" means INSCO Ltd.

"Settling Insurer Group" means the Settling Insurer and each of its present, former and future directors, officers, and employees.

Where the context so requires, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

11.2 Orders.

(A) The disposition of the Settlement Fund is subject to the jurisdiction and further order of this Court;

(B) unless and until the Settlement Agreement terminates, any and all claims, charges or encumbrances which might otherwise have been assessable or assertable by any Person against or with respect to the JM Group's rights and interests based upon, aris-

ing out of or related to the Policy, and any and all claims or causes of action in law, equity, admiralty or otherwise based upon, arising out of, or related to the Policy or which were or are assessable or assertable by any Person against the Policy or any or all members of the Settling Insurer Group, are transferred, and shall attach, solely to the Settlement Fund;

(C) unless and until the Settlement Agreement terminates, upon the Effective Date, the Settling Insurer and its Settling Insurer Group shall have no duties or obligations after the Effective Date based upon, arising out of or related to the Policy (including but not limited to liability for excess workers compensation liability, property damage liability, general liability and any and all other liability) and shall thereafter be released from any and all Policy Claims by any Person, and the Policy shall thereafter be deemed exhausted and shall thereupon be null and void and of no further force or effect;

(D) unless and until the Settlement Agreement terminates, all Persons are restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type or nature with respect to Policy Claims against any or all members of the Settling Insurer Group (it being understood that cross-claims which are unrelated to Policy Claims and which are asserted by any party to JCP No. 1072 against the Settling Insurer are excluded from this clause (D)), except that no Person who asserted prior to the date this Order becomes a Final Order, a claim or cause of action against one or more of the Settling Insurer Group seeking any and all damages (other than or in addition to policy proceeds) for bad faith or other insurer misconduct alleged in connection with the handling or disposition of claims is enjoined from proceeding only with respect to such claim or cause of action; *provided, however*, that any person or entity who (i) asserts such a claim or cause of action where the alleged act or acts or failure or failures to act upon which such claim or cause of action is based arose after the date of this Order and/or who (ii) asserts a claim or cause of action against the Settlement Fund or files a proof of claim for, or receives, a payment under the Plan is so restrained and enjoined from commencing or continuing any such action against any or all members of the Settling Insurer Group; and

(E) upon payment of the Settlement Amount in accordance with the terms and provisions of the Settlement Agreement, the JM Plaintiffs are authorized to dismiss, unconditionally and with prejudice (unless the Settlement Agreement shall otherwise be terminated in accordance with its terms), both of the following: (i) the claims

of the JM Plaintiffs against the Settling Insurer asserted or assertable in the JM Included Action, and (ii) the JM Included Action itself.

12. IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED with respect to the Settlement Agreement dated as of October 20, 1986 between International Surplus Lines Insurance Company, on the one hand, and Manville Corporation, et al., on the other hand, that:

12.1 *Definitions.* As used in this Paragraph and Paragraph 12.2 below, the following defined terms have the following meanings:

"Affiliate" of another Person means any Person directly or indirectly controlling, controlled by, or under common control with, such other Person. The term "controlling" (including, with correlative meaning, the terms "controlled by" or "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

"Final Order" means a judgment, order or other decree approved or entered by any State or Federal Court (including, without limitation, this Court) located in one of the States, or the District of Columbia, which judgment, order or other decree has not been reversed or stayed and as to which the time to appeal has expired and as to which no appeal, petition for rehearing or petition for certiorari is pending (or if such appeal has been filed or any such petition has been granted, it has been finally decided, and such judgment, order or other decree has not been reversed or stayed).

"JCP No. 1072" means Judicial Council Proceeding No. 1072, presently pending in the Superior Court of the State of California, City and County of San Francisco, which includes the JM Included Action.

"JM Group" means the JM Insureds and the present, former and future directors, officers and employees of each of one or more JM Insureds.

"JM Included Action" means that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against the Settling Insurer with respect to the Policies and the allegations and claims of the Settling Insurer against the JM Plaintiffs with respect to the Policies.

"JM Insureds" means Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) who is an Affiliate of Manville Corporation, or Johns-Manville corporation.

"JM Plaintiffs" means Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Corporation), Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.) and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.), each of which is a named plaintiff in JCP No. 1072.

"L/C Bank" means the issuer of the Letter of Credit or any renewal Letter of Credit obtained by the Settling Insurer pursuant to Paragraph 9(b) of the Settlement Agreement.

"Letter of Credit" means an irrevocable letter of credit, in substantially the form attached as Exhibit F to the Settlement Agreement, issued pursuant to Paragraph 9 of the Settlement Agreement, and any renewal thereof.

"Person" means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof.

"Plan" means the Second Amended and Restated Plan of Reorganization of Manville Corporation dated August 22, 1986, as amended, modified or superseded from time to time, in the form in which it is confirmed by a Final Order of this Court.

"Plan Confirmation Order" means the order entered by this Court confirming the Plan.

"Policies" means the following insurance policies (and only the following insurance policies) issued by the settling Insurer to the JM Insureds:

<i>Policy Number</i>	<i>Policy Periods (for information only)</i>
XSI 5205	7/01/79-5/07/80
XSI 5206	7/01/79-5/07/80

"Policy Claims" means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be, asserted by any Person against any or all members of the JM Group or against any or all members of the Settling Insurer Group based upon, arising out of or relating to the Policies.

"Settlement Agreement" means the Settlement Agreement dated as of October 20, 1986, between the Settling Insurer, on the one hand, and Manville Corporation, et al., on the other hand.

"Settlement Amount" means Two Million Dollars (\$2,000,000).

"Settlement Fund" means the Settlement Amount, together with any amounts paid by the Settling Insurer pursuant to Paragraph 5(b) or 5(c) of the Settlement Agreement, upon deposit of such

amounts with (or in accordance with the written instructions of) the Clerk of this Court in accordance with the provisions of Paragraph 2 of the Settlement Agreement, and all investment income thereon and gains or losses attributable thereto after any such deposit.

"Settling Insurer" means International Surplus Lines Insurance Company.

"Settling Insurer Group" means the Settling Insurer and each of its present and former Affiliates and present, former and future directors, officers, and employees.

Where the context so requires, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

12.2 Orders.

(A) The disposition of the Settlement Fund is subject to the jurisdiction and further order of this Court;

(B) unless and until the Settlement Agreement terminates, any and all claims, charges or encumbrances which might otherwise have been assessable or assertable by any Person against or with respect to the JM Group's rights and interests based upon, arising out of or related to the Policies, and any and all claims or causes of action in law, equity, admiralty or otherwise based upon, arising out of, or related to the Policies or which were or are assessable or assertable by any Person against the Policies or any or all members of the Settling Insurer Group, are transferred, and shall attach, solely to the Settlement Fund;

(C) unless and until the Settlement Agreement terminates, upon payment by the L/C Bank of the Settlement Amount to (or in accordance with the written instructions of) the Clerk of this Court in accordance with Paragraph 2(c) of the Settlement Agreement, the Settling Insurer and its Settling Insurer Group shall have no duties or obligations based upon, arising out of or related to the Policies and shall thereafter be released from any and all Policy Claims by any Person, and the Policies shall thereafter be deemed exhausted and shall thereupon be null and void and of no further force or effect;

(D) unless and until the Settlement Agreement terminates, all Persons are restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type or nature with respect to Policy Claims against any or all members of the Settling Insurer Group (it being understood that cross-claims which are unrelated to Policy Claims and which are asserted by any party to JCP No. 1072 against the Settling Insurer are excluded from

this clause (D)), except that no Person who asserted prior to the date this Order becomes a Final Order, a claim or cause of action against one or more of the Settling Insurer Group seeking any and all damages (other than or in addition to policy proceeds) for bad faith or other insurer misconduct alleged in connection with the handling or disposition of claims is enjoined from proceeding only with respect to such claim or cause of action; *provided, however*, that any Person who (i) asserts such a claim or cause of action where the alleged act or acts or failure or failures to act upon which such claim or cause of action is based arose after the date of this Order and/or (ii) asserts a claim or cause of action against the Settlement Fund or files a proof of claim for, or receives, a payment under the Plan is so restrained and enjoined from commencing or continuing any such action against any or all members of the Settling Insurer Group; and

(E) upon delivery by the L/C Bank of the Settlement Amount to (or in accordance with the written instructions of) the Clerk of this Court in accordance with the terms and provisions of the Settlement Agreement, the JM Plaintiffs are authorized to dismiss, unconditionally and with prejudice (unless the Settlement Agreement shall otherwise be terminated in accordance with its terms), both of the following: (i) the claims of the JM Plaintiffs against the Settling Insurer asserted or assertable in the JM Included Action, and (ii) the JM Included Action itself.

13. IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED with respect to the Settlement Agreement dated as of September 8, 1986, between the Settling Insurers (as defined in Paragraph 13.1 below), on the one hand, and Manville Corporation, et al., on the other hand, that:

13.1 *Definitions.* As used in this Paragraph and Paragraph 13.2 below, the following defined terms have the following meanings:

“Affiliate” of another Person means any Person directly or indirectly controlling, controlled by, or under common control with, such other Person. The term “controlling” (including, with correlative meaning, the terms “controlled by” or “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

“Business Day” means, (i) with respect to deposits with this Court, any day on which this Court is open, and (ii) with respect to any other usage, any day except a Saturday, Sunday or other

day on which commercial banks in New York City are authorized by law to close.

"Final Installment Payment" means Twenty-Six Million Eight Hundred Sixty Thousand Nine Hundred Nineteen Dollars (U.S. \$26,860,919), due and payable on the Final Payment Date.

"Final Order" means a judgment, order or other decree approved or entered by any State or Federal Court (including, without limitation, this Court) located in one of the States, or the District of Columbia, which judgment, order or other decree has not been reversed or stayed and as to which the time to appeal has expired and as to which no appeal, petition for rehearing or petition for certiorari is pending (or if such appeal has been filed or any such petition has been granted, it has been finally decided and such judgment, order or other decree has not been reversed or stayed).

"Final Payment Date" means the second anniversary of the First Payment Dated or, if such second anniversary is not a Business Day, then the first Business Day thereafter.

"First Payment Date" means the later of (i) July 1, 1987, and (ii) the ninetieth day following the Plan Confirmation Date or, if such ninetieth day is not a Business Day, then the first Business Day thereafter.

"JCP No. 1072" means Judicial Council Proceeding No. 1072, presently pending in the Superior Court of the State of California, City and County of San Francisco, which includes the JM Included Action.

"JM Group" means the JM Insureds and the present, former and future directors, officers and employees of each of one or more of the JM Insureds.

"JM Included Action" means that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against the Litigant Settling Insurer Parties with respect to certain of the Policies and the allegations and claims of the Litigant Settling Insurer Parties against the JN Plaintiffs with respect to those Policies.

"JM Insureds" means Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) who is an Affiliate of Manville Corporation or Johns-Manville Corporation.

"JM Plaintiffs" means Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Corporation), Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.) and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.), each of which is a named plaintiff in JCP No. 1072.

"Litigant Settling Insurer Parties" means those Settling Insurer Parties that are defendants in the JM Included Action, as indicated on Exhibit I to the Settlement Agreement.

"Person" means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof.

"Plan" means the revised form of the Second Amended and Restated Plan of Reorganization of Manville Corporation dated May 23, 1986, as filed with this Court on June 4, 1986, and as amended, modified or superseded from time to time, in the form in which it is confirmed by a Final Order of this Court.

"Plan Confirmation Date" means the date on which the Plan Confirmation Order becomes a Final Order.

"Plan Confirmation Order" means the order entered by this Court confirming the Plan.

"Policies" means the following listed insurance policies (and only the following insurance policies) issued by the Settling Insurer Parties to the JM Insureds, as such policies may be modified, amended or supplemented to the date of the Settlement Agreement:

<i>Policy Number</i>	<i>Policy Periods (for information only)</i>
UKL 1177	July 1, 1978-July 1, 1980
UKL 1178	July 1, 1978-July 1, 1980
UKL 1179	July 1, 1978-July 1, 1979
UKL 1180	July 1, 1978-July 1, 1980
UKL 1181	July 1, 1978-July 1, 1979
ULL 0931	July 1, 1979-July 1, 1980
ULL 0932	July 1, 1979-July 1, 1980
ULL 1218	July 1, 1979-July 1, 1980
UMA 0476	July 1, 1980-July 1, 1983
UMA 0477	July 1, 1980-July 1, 1981
UMA 0478	July 1, 1980-July 1, 1981
UMA 0479	July 1, 1980-July 1, 1981
UNA 0412	July 1, 1980-July 1, 1983
UNA 0413	July 1, 1980-July 1, 1983
UNA 0414	July 1, 1981-July 1, 1983

"Policy Claims" means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be, asserted by any Person against any or all members of the JM Group or against any or all members of the Settling Insurer Group based upon, arising out of or relating to the Policies.

"Settlement Agreement" means the Settlement Agreement dated as of September 8, 1986, between the Settling Insurers, on the one hand, and Manville Corporation, et al., on the other hand.

"Settlement Amount" means Sixty-Two Million One Hundred Seventy-Six Thousand Five Hundred Fifty-Six Dollars (U.S. \$62,176,556), consisting of three installment payments as described in the Settlement Agreement.

"Settlement Fund" means the Settlement Amount, together with all amounts paid by the Settling Insurer Parties pursuant to Paragraph 5 of the Settlement Agreement, upon deposit of such amounts with (or in accordance with the written instructions of) the Clerk of this Court in accordance with the Provisions of the Settlement Agreement and the Trust Agreement, and all investment income thereon and gains or losses attributable thereto after any such deposit.

"Settling Insurer Group" means the Settling Insurer Parties and their respective present or former Affiliates and each of their present, former and future directors, officers, stockholders (in their capacity as such), members, members' agents, insurance underwriters, and employees.

"Settling Insurer Party" means (i) any company or corporation (as presently or previously constituted) or any syndicate of Lloyd's of London (including each member of such syndicate as such syndicate is presently or was previously constituted) which is or is alleged to be a subscribing insurer to one or more of the Policies (including each Litigant Settling Insurer Party), and (ii) any company, corporation, syndicate or other entity which is listed on the signature pages to the Settlement Agreement by reason of being a successor, assignee or otherwise of a Settling Insurer Party; *provided, however*, that none of Pacific & General Insurance Company, Limited, Mentor Insurance Company (United Kingdom) Limited and Compania Agricola de Seguros is a "Settling Insurer Party" for purposes of the Settlement Agreement.

"Settling Insurers" means Allianz Versicherungs Aktiengesellschaft, Assicurazioni Generali Di Trieste E Venezia S.P.A., Bellefonte Insurance Company, Bermuda Fire & Marine J. Insurance Company Ltd., Chemical Insurance Company Ltd., CNA Reinsurance of London Ltd., Dart Insurance Company Ltd., Dominion Insurance Company Ltd., Eisen Und Stahl Ruckversicherungs Aktiengesellschaft, El Paso Insurance Company Ltd., INSCO Ltd., La Preservatrice Compagnie Anonyme d'Assurances Contres Les Accidents L'Incendie et Les Risques Divers, Le Assicurazioni D'Italia Societa Per Azioni, Mutual Reinsurance Company Ltd.,

Nisshin Fire & Marine Insurance Company Ltd., North Atlantic Insurance Company Limited, Reaseguradora Nacional De Venezuela Compania Anonima, Royale Belge I.R. S.A. D'Assurances, St. Katherine Insurance Company Ltd., Stronghold Insurance Company Ltd., Union Atlantique D'Assurances S.A., Walbrook Insurance Company, Ltd., "Winterthur" Swiss Insurance Company, Yasuda Fire & Marine Insurance Company (UK) Ltd., British National Life Insurance Society Ltd., Brittany Insurance Company Ltd., Bryanston Insurance Company Ltd., Compagnie Europeene D'Assurances Industrielles S.A., Groupe Josi Re, International Insurance Company, Latino Americana De Reaseguros, Louisville Insurance Company Ltd., and the following Underwriting Syndicates, Lloyd's of London (including the underwriting members thereof): 99, 126, 175, 219, 231, 235, 278, 279, 365, 408, 518, 553, 618, 653, 661, 701, 799, 918, 948 and 989.

"Trust" means the trust established pursuant to Paragraphs 2 and 9 of the Settlement Agreement and administered pursuant to the Trust Agreement.

"Trust Agreement" means the Trust Agreement dated as of September 8, 1986, between the parties to the Settlement Agreement and the Trustee with respect to the terms and provisions governing the administration of the Trust.

"Trustee" means The Colorado National Bank of Denver, a national banking association, the trustee under the Trust Agreement, and any successor thereto.

Where the context so requires, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

13.2 *Orders.*

(A) The disposition of the Settlement Fund is subject to the jurisdiction and further order of this Court;

(B) unless and until the Settlement Agreement terminates in accordance with the express provisions thereof, any and all claims, charges or encumbrances which might otherwise have been assessable or assertable by any Person against or with respect to the JM Group's rights and interests -based upon, arising out of or related to any or all of the Policies, and any and all claims or causes of action in law, equity, admiralty or otherwise based upon, arising out of, or related to any or all of the Policies or which were or are assessable or assertable by any Person against any or all of the Policies or any or all members of the Settling Insurer Group, are transferred and shall attach solely to the Settlement Fund;

(C) unless and until the Settlement Agreement terminates in accordance with the express provisions thereof, the Settling Insurer Group shall have no duties or obligations based upon, arising out of or related to the Policies, and shall be released from any and all Policy Claims by any Person, and the Policies shall hereafter be deemed exhausted and shall hereupon be null and void and of no further force or effect as to any member of the Settling Insurer Group;

(D) unless and until the Settlement Agreement terminates in accordance with the express provisions thereof, all Persons are restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type or nature with respect to Policy Claims against any or all members of the Settling Insurer Group (it being understood that cross-claims asserted by any party to JCP No. 1072 against the Litigant Settling Insurer Parties that are unrelated to Policy Claims are excluded from this clause (D)); and

(E) promptly after the Final Payment Date, and provided that no member of the Settling Insurer Group shall have attempted to prevent the Trustee from paying the Final installment Payment to the Clerk of this Court in accordance with the Trust Agreement, the JM Plaintiffs are authorized to dismiss, unconditionally and with prejudice, both of the following: (i) the claims of the JH Plaintiffs against the Settling Insurer Group asserted or assertable in the JM Included Action, and (ii) the JM Included Action itself.

14. IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED with respect to the Settlement Agreement dated as of October 10, 1986, between Marsh & McLennan, Incorporated and Marsh & McLennan, Limited, on the one hand, and Manville Corporation, et al., on the other hand, that:

14.1 *Definitions.* As used in this Paragraph and Paragraph 14.2 below, the following defined terms have the following meanings:

“Affiliate” of another Person means any Person directly or indirectly controlling, controlled by, or under common control with, such other Person. The term “controlling” (including, with correlative meaning, the terms “controlled by” or “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

“Applicable Rate” means, for each one-year period or portion thereof, the rate determined on the first Business Day of such period equal to the per annum discount rate for the most recently auc-

tioned one-year U.S. Treasury Bills, as published by the Board of Governors of the Federal Reserve System, plus one percent (1%).

“Business Day” means (i) with respect to deposits with, or wire transfers to, this Court, any day on which this Court is open, and (ii) with respect to any other usage, any day except a Saturday, Sunday or other day on which commercial banks in New York City or Pittsburgh, Pennsylvania are authorized by law to close.

“Dismissal Agreement” means the “Agreement for Dismissal of Litigation in Contemplation of Settlement” dated October 10, 1986, between the JM Plaintiffs and Marsh.

“Effective Date” means October 10, 1986.

“E&O Release” means a release executed by Manville Corporation and by the JM Plaintiffs, substantially in the form attached as Exhibit B to the Settlement Agreement, and delivered to the Trustee.

“Final Order” means a judgment, order or other decree approved or entered by any State or Federal Court (including, without limitation, this Court) located in one of the States, the territories of the United States, or the District of Columbia, which judgment, order or other decree has not been reversed or stayed and as to which the time to appeal has expired and as to which no appeal, petition for rehearing or petition for certiorari is pending (or if such appeal has been filed or any such petition has been granted, it has been finally decided and such judgment, order or other decree has not been reversed or stayed).

“Funding Date” means the later of (i) January 1, 1987 and (ii) the fifth Business Day following the first date on which both this Order becomes a Final Order and the Plan Confirmation Date has occurred.

“Home Action” means that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against their insurers, and the allegations and claims by their insurers against the JM Plaintiffs, instituted on March 31, 1980 in the Superior Court of the State of California, City and County of San Francisco, entitled *Johns-Manville Corporation, et al., vs. the Home Insurance Company, et al.*, Docket No. 765226.

“JCP No. 1072” means Judicial Council Proceeding No. 1072, presently pending in the Superior Court of the State of California, City and County of San Francisco, which includes the JM Included Actions.

“JM Group” means any or all of the JM Insureds and the present, former and future directors, officers and employees of each of one or more JM Insured.

“JM Included Actions” means the Home Action and the Marsh Action.

“JM Insureds” means any or all of Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) who is an Affiliate of Manville Corporation or Johns-Manville Corporation.

“JM Plaintiffs” means any or all of Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Corporation), Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.) and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.), each of which is a named plaintiff in JCP No. 1072.

“JM Release” means a release executed by Manville Corporation and by the JM Plaintiffs, substantially in the form attached as Exhibit D to the Settlement Agreement, and delivered to the Trustee.

“JM Responsible Entity” means the Persons which are (or, on or after the Plan Confirmation Date, the Person or Persons which will be, under the Plan (or pursuant to an order of this Court)) liable for asbestos-related claims (including, without limitation, health, personal injury or property damage claims) involving any or all JM Insureds. As of the date hereof, the JM Responsible Entity is designated under the Plan as the “Trust” and the “PD Trust”.

“Marsh” means both Marsh & McLennan, Incorporated, a Delaware corporation, and Marsh & McLennan, Limited, a Canadian corporation.

“Marsh Action” means that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against Marsh, and the defenses of Marsh against the JM Plaintiffs, instituted on November 28, 1981 in the Superior Court of the State of California, City and County of San Francisco, entitled *Johns-Manville Corporation, et al., v. Marsh & McLennan, Incorporated, et al.*, Docket No. 787776.

“Marsh Claims” means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be, asserted by any Person against the Marsh Group based upon, arising out of or relating to services (whether acts or omissions) performed by the Marsh Group for the JM Group, at any time, in connection with insurance policies issued to or for the benefit of any of the JM Group (other than insurance policies issued to any individual member of the JM Group which were not issued in connection with

such member's employment by the JM Insureds), including, without limitation, the negotiation, placement and securing of such policies, and attempts to receive the proceeds of, as well as the application for, advice concerning and any claims asserted under, such policies.

"Marsh Group" means any or all of Marsh and its present or former Affiliates, and each of their present, former and future directors, officers, and employees.

"Person" means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof.

"Plan" means the revised form of the Second Amended and Restated Plan of Reorganization of Manville Corporation dated May 23, 1986, as filed with this Court on June 4, 1986, and as amended, modified or superseded from time to time, in the form in which it is confirmed by a Final Order of this Court.

"Plan Confirmation Date" means the date on which the Plan Confirmation Order becomes a Final Order.

"Plan Confirmation Order" means the order entered by this Court confirming the Plan.

"Settlement Agreement" means the Settlement Agreement dated as of October 10, 1986, between Marsh, on the one hand, and Manville Corporation, et al., on the other hand.

"Settlement Amount" means Twenty-Nine Million Seven Hundred Fifty Thousand U.S. Dollars (U.S. \$29,750,000) plus interest, if any, accrued thereon at the Applicable Rate for (i) initially, the one-year period (or portion thereof) commencing on January 1, 1987 and ending on December 31, 1987 or the Funding Date, whichever is earlier, and (ii) thereafter, if the Funding Date has not occurred, for each one-year period (or portion thereof) commencing on the last day of the preceding one-year period and ending one year thereafter or on the Funding Date, whichever is earlier, such interest to be computed on the basis of a 365-day year for the actual days elapsed.

"Settlement Fund" means the Settlement Amount upon its transfer to the Trustee in accordance with the provisions of Paragraph 2 of the Settlement Agreement, all investment income thereon and gains or losses attributable thereto after such deposit, and any interest paid in accordance with Paragraph 2(f) of the Settlement Agreement, minus any amounts paid to Manville Corporation or Marsh pursuant to Paragraph 11 of the Settlement Agreement.

"Transferred Settlement Fund" means that portion of the Settlement Fund which has been deposited with (or in accordance with the written instructions of) the Clerk of this Court.

"Trust Agreement" means the trust agreement dated October 10, 1986 among Marsh, Manville Corporation, the JM Plaintiffs and the Trustee.

"Trustee" means Mellon Bank, H.A., a national banking association, the trustee under the Trust Agreement, or any successor trustee thereunder.

Where the context so requires, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

14.2 Orders.

(A) The disposition of the Transferred Settlement Fund is subject to the jurisdiction and further order of this Court;

(B) any and all claims, charges or encumbrances which might otherwise have been assessable or assertable by any Person against or with respect to the JM Group's rights and interests based upon, arising out of or related to Marsh Claims, and any and all claims or causes of action in law, equity, admiralty or otherwise based upon, arising out of, or related to Marsh Claims which were or are assessable or assertable by any Person against any or all members of the Marsh Group are transferred, and shall attach, solely to the Transferred Settlement Fund;

(C) commencing on the Effective Date, the Marsh Group shall have no further duties or obligations based upon, arising out of or related to Marsh Claims other than those set forth in the Settlement Agreement, the Dismissal Agreement and the Trust Agreement;

(D) commencing on the Plan Confirmation Date, all Persons, except Marsh, are restrained and enjoined from commencing and/or continuing any action, suit, arbitration or other proceeding of any type or nature against the Marsh Group based upon, arising out of, or related to Marsh Claims;

(E) the JM Plaintiffs are authorized to dismiss, unconditionally and with prejudice, both (i) the claims of the JM Plaintiffs against Marsh asserted or assertable in the Marsh Action, and (ii) the Marsh Action itself; and

(F) the JM Responsible Entity shall be deemed to be an assignee of Manville Corporation in Manville Corporation's capacity as releasor under the JM Release and the E&O Release.

IS. IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED with respect to the Settlement Agreement dated

as of May 22, 1985, between Peerless Casualty Company (now known as Peerless Insurance Company), on the one hand, and Manville Corporation, et al., on the other hand, that:

15.1 *Definitions.* As used in this Paragraph and Paragraph 15.2 below, the following defined terms have the following meanings:

“Affiliate” of another Person means any Person directly or indirectly controlling, controlled by, or under common control with, such other Person. The term “controlling” (including, with correlative meaning, the terms “controlled by” or “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

“Code” means the laws of the United States relating to bankruptcy or reorganization, including, without limitation, Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended.

“Effective Date” means May 22, 1985.

“Escrow Account” means an escrow account administered pursuant to the Escrow Agreement, with a banking institution satisfactory to the JM Plaintiffs.

“Escrow Agent” means the banking institution which is the escrow agent under the Escrow Agreement.

“Escrow Agreement” means the agreement dated as of May 22, 1985 entered into by the parties to the Settlement Agreement and the Escrow Agent with respect to the terms and provisions governing the administration of the Escrow Account.

“Escrow Property” means the Settlement Amount upon its deposit in the Escrow Account, together with any payment deposited in the Escrow Account in accordance with Paragraph 5(b) of the Settlement Agreement, and all investment income thereon and gains or losses attributable thereto after such deposits, until release of such payments and interest income from the Escrow Account.

“Final Order” means a judgment, order or other decree approved or entered by any State or Federal Court (including, without limitation, this Court) located in one of the States, or the District of Columbia, which judgment, order or other decree has not been reversed or stayed and as to which the time to appeal has expired and as to which no appeal, petition for rehearing or petition for certiorari is pending (or if such appeal has been filed or any such petition has been granted, it has been finally decided and such judgment, order or other decree has not been reversed or stayed).

“JCP No. 1072” means Judicial Council Proceeding No. 1072,

presently pending in the Superior Court of the State of California, County of San Francisco, which includes the JM Included Action.

"JM Debtors" means Johns-Manville Corporation and each of its Affiliates which filed a petition for reorganization under Chapter 11 of the Code with this Court on August 26, 1982, unless such corporation has had or will have a plan of reorganization confirmed by an order of this Court which is a Final Order prior to the Plan Confirmation Date.

"JM Group" means the JM Insureds and the present, former or future directors, officers and employees of one or more JM Insureds.

"JM Included Action" means that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against the Settling Insurer and the allegations and claims of the Settling Insurer against the JM Plaintiffs.

"JM Insureds" means Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) who was or is an Affiliate of Manville Corporation or Johns-Manville Corporation.

"JM Plaintiffs" means Johns-Manville Corporation, Johns-Manville Sales Corporation, Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.) and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.), each of which is a named plaintiff in JCP No. 1072.

"Person" means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof.

"Plan" means the Joint Plan of Reorganization, dated October 17, 1983, of the JM Debtors, as filed with this Court on November 21, 1983, and as amended, modified or superseded from time to time, in the form in which it is confirmed by an Order of this Court which is a Final Order.

"Plan Confirmation Date" means the date on which the Plan Confirmation Order becomes a Final Order.

"Plan Confirmation Order" means the order entered by this Court confirming the Plan.

"Policies" mean the following insurance policies issued by the Settling Insurer to the JM Insureds: Policy Nos. 619, 829, 930, 1-245 and 1-010.

"Policy Claims" means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be asserted by any Person against any or all members of the JM Group or against

any or all members of the Settling Insurer Group based upon, arising out of or relating to the Policies.

"Settlement Agreement" means the Settlement Agreement dated as of May 22, 1985, between the Settling Insurer, on the one hand, and Manville Corporation, et al., on the other hand.

"Settlement Amount" means \$1,300,000, consisting of two installment payments of \$800,000 on the Effective Date, and \$500,000 on or before March 3, 1986.

"Settlement Fund" means the Escrow Property upon its release (other than because of termination of the Settlement Agreement in accordance with its terms) from the Escrow Account in accordance with the provisions of the Escrow Agreement, and all investment income thereon and gains or losses attributable thereto after such release.

"Settling Insurer" means Peerless Casualty Company, now known as Peerless Insurance Company, on behalf of itself and each of its Affiliates.

"Settling Insurer Group" means the Settling Insurer and its present or former Affiliates, and present, former or future directors, officers, and employees.

Where the context so requires, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

15.2 Orders.

(A) The disposition of the Settlement Fund is subject to the jurisdiction and further order of this Court;

(B) any and all claims, charges or encumbrances which might otherwise have been assessable or assertable by any Person against or with respect to the JM Group's rights and interests based upon, arising out of or related to any or all of the Policies, and any and all claims or causes of action in law, equity, admiralty or otherwise based upon, arising out of, or related to any or all of the Policies or which were or are assessable or assertable by any Person against any or all of the Policies or any or all members of the Settling Insurer Group, are transferred, and shall attach, solely to the Settlement Fund;

(C) upon the release (other than because of the termination of the Settlement Agreement in accordance with its terms) of the Escrow Property from the Escrow Account pursuant to the terms of the Settlement Agreement and the Escrow Agreement, the Settling Insurer and its Settling Insurer Group shall have no further duties or obligations based upon, arising out of or related to the Policies and shall thereafter be released from any and all Policy Claims by

any Person, and all of the Policies of any or all members of such Settling Insurer Group shall upon such release be exhausted by virtue of such release and shall thereupon be null and void and of no further force or effect;

(D) upon the release (other than because of the termination of the Settlement Agreement in accordance with its terms) of the Escrow Property from the Escrow Account pursuant to the terms of the Settlement Agreement and the Escrow Agreement, all Persons are restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type or nature for Policy Claims against any or all members of the Settling Insurer Group (it being understood that cross-claims which are unrelated to Policy Claims and which are asserted by any party to JCP No. 1072 against the Settling Insurers are excluded from this clause (D)), except that no Person who asserted prior to the date this Order becomes a Final Order a claim or cause of action against one or more of the Settling Insurer Group seeking any and all damages (other than or in addition to policy proceeds) for bad faith or other insurer misconduct alleged in connection with the handling or disposition of claims is enjoined from proceeding only with respect to such claim or cause of action; and

(E) the JM Plaintiffs are authorized to dismiss, unconditionally and with prejudice (unless the Settlement Agreement shall otherwise be terminated in accordance with its terms), both of the following: (i) the claims of the JM Plaintiffs against the Settling Insurers asserted or assertable in the JM Included Action, and (ii) the JM Included Action itself.

16. IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED with respect to the Settlement Agreement dated as of March 27, 1986, between Prudential Reinsurance Company, on the one hand, and Manville Corporation, et al., on the other hand, that:

16.1 *Definitions.* As used in this Paragraph and Paragraph 16.2 below, the following defined terms have the following meanings:

"Affiliate" of another Person means any Person directly or indirectly controlling, controlled by, or under common control with, such other Person. The term "controlling" (including, with correlative meaning, the terms "controlled by" or "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

"Code" means the laws of the United States relating to bankruptcy or reorganization, including, without limitation, Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended.

"Effective Date" means March 27, 1986.

"Final Order" means a judgment, order or other decree approved or entered by any State or Federal Court (including, without limitation, this Court) located in one of the States, or the District of Columbia, which judgment, order or other decree has not been reversed or stayed and as to which the time to appeal has expired and as to which no appeal, petition for rehearing or petition for certiorari is pending (or if such appeal has been filed or any such petition has been granted, it has been finally decided and such judgment, order or other decree has not been reversed or stayed).

"JCP No. 1072" means Judicial Council Proceeding No. 1072, presently pending in the Superior Court of the State of California, County of San Francisco, which includes the JM Included Action.

"JM Debtors" means Johns-Manville Corporation and each of its Affiliates which filed a petition for reorganization under Chapter 11 of the Code with this Court on August 26, 1982, unless such corporation has had or will have a plan of reorganization confirmed by an order of this Court which is a Final Order prior to the Plan Confirmation Date.

"JM Group" means the JM Insureds and the present, former and future directors, officers and employees of each of one or more JM Insureds.

"JM Included Action" means that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against the Settling Insurer with respect to the Policies and the allegations and claims of the Settling Insurer against the JM Plaintiffs with respect to the Policies.

"JM Insureds" means Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) who was or is, an Affiliate of Manville Corporation or Johns-Manville Corporation.

"JM Plaintiffs" means Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Corporation), Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.) and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.), each of which is a named plaintiff in JCP No. 1072.

"Person" means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof.

"Plan" means the First Amended and Restated Plan of Reorganization, dated February 14, 1986, of the JM Debtors, as filed with this Court on February 14, 1986, and as amended, modified or superseded from time to time, in the form in which it is confirmed by a Final Order of this Court.

"Plan Confirmation Date" means the date on which the Plan Confirmation Order becomes a Final Order.

"Plan Confirmation Order" means the order entered by this Court confirming the Plan.

"Policies" means the following insurance policies issued by the Settling Insurer to the JM Insureds:

<i>Policy Number</i>	<i>Policy Periods (for information only)</i>
DXC 90 1143	7/01/76-7/01/77
DXC DX 0308	7/01/77-7/01/78
DXC DX 1109	7/01/78-7/01/79

"Policy Claims" means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be, asserted by any Person against any or all members of the JM Group or against any or all members of the Settling Insurer Group based upon, arising out of or relating to the Policies.

"Settlement Agreement" means the Settlement Agreement dated as of March 27, 1986, between the Settling Insurer, on the one hand, and Manville Corporation, et al., on the other hand.

"Settlement Amount" means Seven Million Nine Hundred Thirty-Seven Thousand Five Hundred Dollars (\$7,937,500).

"Settlement Fund" means the Settlement Amount upon its deposit with (or in accordance with the written instructions of) the Clerk of this Court in accordance with the provisions of Paragraph 2 of the Settlement Agreement, and all investment income thereon and gains or losses attributable thereto after any such deposit.

"Settling Insurer" means Prudential Reinsurance Company.

"Settling Insurer Group" means the Settling Insurer and each of its present, former and future directors, officers, and employees.

Where the context so requires, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

16.2 Orders.

(A) The disposition of the Settlement Fund is subject to the jurisdiction and further order of this Court;

(B) unless and until the Settlement Agreement terminates, any and all claims, charges or encumbrances which might otherwise have

been assessable or assertable by any Person against or with respect to the JM Group's rights and interests based upon, arising out of or related to the Policies, and any and all claims or causes of action in law, equity, admiralty or otherwise based upon, arising out of, or related to the Policies or which were or are assessable or assertable by any Person against the Policies or any or all members of the Settling Insurer Group, are transferred, and shall attach, solely to the Settlement Fund;

(C) unless and until the Settlement Agreement terminates, upon the Effective Date, the Settling Insurer and its Settling Insurer Group shall have no duties or obligations after the Effective Date based upon, arising out of or related to the Policies (including but not limited to liability for excess workers compensation liability, property damage liability, general liability and any and all other liability) and shall thereafter be released from any and all Policy Claims by any Person, and the Policies shall thereafter be deemed exhausted and shall thereupon be null and void and of no further force or effect;

(D) unless and until the Settlement Agreement terminates, all Persons are restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type or nature with respect to Policy Claims against any or all members of the Settling Insurer Group (it being understood that cross-claims which are unrelated to Policy Claims and which are asserted by any party to JCP No. 1072 against the Settling Insurer are excluded from this clause (D)), except that no Person who asserted prior to the date this Order becomes a Final Order a claim or cause of action against one or more of the Settling Insurer Group seeking any and all damages (other than or in addition to policy proceeds) for bad faith or other insurer misconduct alleged in connection with the handling or disposition of claims is enjoined from proceeding only with respect to such claim or cause of action; *provided, however*, that any Person who (i) asserts such a claim or cause of action where the alleged act or acts or failure or failures to act upon which such claim or cause of action is based arose after the date of this Order and/or who (ii) asserts a claim or cause of action against the Settlement Fund or files a proof of claim for, or receives, a payment under the Plan is so restrained and enjoined from commencing or continuing any such action against any or all members of the Settling Insurer Group; and

(E) upon payment of the Settlement Amount in accordance with the terms and provisions of the Settlement Agreement, the JM Plaintiffs are authorized to dismiss, unconditionally and with prejudice

(unless the Settlement Agreement shall otherwise be terminated in accordance with its terms), both of the following: (i) the claims of the JM Plaintiffs against the Settling Insurer asserted or assertable in the JM Included Action, and (ii) the JM Included Action itself.

17. IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED with respect to the Settlement Agreement dated as of May 28, 1986, between Puritan Insurance Company, on the one hand, and Manville Corporation, et al., on the other hand, that:

17.1 *Definitions.* As used in this Paragraph and Paragraph 17.2 below, the following defined terms have the following meanings:

"Affiliate" of another Person means any Person directly or indirectly controlling, controlled by, or under common control with, such other Person. The term "controlling" (including, with correlative meaning, the terms "controlled by" or "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

"Code" means the laws of the United States relating to bankruptcy or reorganization, including, without limitation, Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.*, as amended.

"Effective Date" means May 28, 1986.

"Final Order" means a judgment, order or other decree approved or entered by any State or Federal Court (including, without limitation, this Court) located in one of the States, or the District of Columbia, which judgment, order or other decree has not been reversed or stayed and as to which the time to appeal has expired and as to which no appeal, petition for rehearing or petition for certiorari is pending (or if such appeal has been filed or any such petition has been granted, it has been finally decided and such judgment, order or other decree has not been reversed or stayed).

"JCP No. 1072" means Judicial Council Proceeding No. 1072, presently pending in the Superior Court of the State of California, County of San Francisco, which includes the JM Included Action.

"JM Debtors" means Johns-Manville Corporation and each of its Affiliates which filed a petition for reorganization under Chapter 11 of the Code with this Court on August 26, 1982, unless such corporation has had or will have a plan of reorganization confirmed by an order of this Court which is a Final Order prior to the Plan Confirmation Date.

"JM Group" means the JM Insureds and the present, former and future directors, officers and employees of each of one or more JM Insureds.

"JM Included Action" means that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against the Settling Insurer with respect to the Policies and the allegations and claims of the Settling Insurer against the JM Plaintiffs with respect to the Policies.

"JM Insureds" means Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) who was or is an Affiliate of Manville Corporation or Johns-Manville Corporation.

"JM Plaintiffs" means Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Corporation), Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.) and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.), each of which is a named plaintiff in JCP No. 1072.

"Person" means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof.

"Plan" means the First Amended and Restated Plan of Reorganization, dated February 14, 1986, of the JM Debtors, as filed with this Court on February 14, 1986, and as amended, modified or superseded from time to time, in the form in which it is confirmed by a Final Order of this Court.

"Plan Confirmation Date" means the date on which the Plan Confirmation Order becomes a Final Order.

"Plan Confirmation Order" means the order entered by this Court confirming the Plan.

"Policies" means the following insurance policies issued by the Settling Insurer to the JM Insureds:

<i>Policy Number</i>	<i>Policy Periods (for information only)</i>
ML 65 0094	7/01/76-7/01/77
ML 65 0313	3/01/77-7/01/77
ML 65 0355	7/01/77-7/01/78

"Policy Claims" means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be, asserted by any Person against any or all members of the JM Group or against any or all members of the Settling Insurer Group based upon, arising out of or relating to the Policies.

"Settlement Agreement" means the Settlement Agreement dated as of May 28, 1986, between the Settling Insurer, on the one hand, and Manville Corporation, et al., on the other hand.

"Settlement Amount" means Seven Million Five Hundred Thousand Dollars (\$7,500,000).

"Settlement Fund" means the Settlement Amount upon its deposit with (or in accordance with the written instructions of) the Clerk of this Court in accordance with the provisions of Paragraph 2 of the Settlement Agreement, and all investment income thereon and gains or losses attributable thereto after any such deposit.

"Settling Insurer" means Puritan Insurance Company.

"Settling Insurer Group" means the Settling Insurer and each of its present, former and future directors, officers, and employees.

Where the context so requires, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

17.2 Orders.

(A) The disposition of the Settlement Fund is subject to the jurisdiction and further order of this Court;

(B) unless and until the Settlement Agreement terminates, any and all claims, charges or encumbrances which might otherwise have been assessable or assertable by any Person against or with respect to the JM Group's rights and interests based upon, arising out of or related to the Policies, and any and all claims or causes of action in law, equity, admiralty or otherwise based upon, arising out of, or related to the Policies or which were or are assessable or assertable by any Person against the Policies or any or all members of the Settling Insurer Group, are transferred, and shall attach, solely to the Settlement Fund;

(C) unless and until the Settlement Agreement terminates, upon the Effective Date, the Settling Insurer and its Settling Insurer Group shall have no duties or obligations after the Effective Date based upon, arising out of or related to the Policies (including but not limited to liability for excess workers compensation liability, property damage liability, general liability and any and all other liability) and shall thereafter be released from any and all Policy Claims by any Person, and the Policies shall thereafter be deemed exhausted and shall thereupon be null and void and of no further force or effect;

(D) unless and until the Settlement Agreement terminates, all Persons are restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type or nature with respect to Policy Claims against any or all members of the

Settling Insurer Group (it being understood that cross-claims which are unrelated to Policy Claims and which are asserted by any party to JCP No. 1072 against the Settling Insurer are excluded from this clause (D)), except that no Person who asserted prior to the date this Order becomes a Final Order a claim or cause of action against one or more of the Settling Insurer Group seeking any and all damages (other than or in addition to policy proceeds) for bad faith or other insurer misconduct alleged in connection with the handling or disposition of claims is enjoined from proceeding only with respect to such claim or cause of action; *provided, however*, that any Person who (i) asserts such a claim or cause of action where the alleged act or acts or failure or failures to act upon which such claim or cause of action is based arose after the date of this Order and/or who (ii) asserts a claim or cause of action against the Settlement Fund or files a proof of claim for, or receives, a payment under the Plan is so restrained and enjoined from commencing or continuing any such action against any or all members of the Settling Insurer Group; and

(E) upon payment of the Settlement Amount in accordance with the terms and provisions of the Settlement Agreement, the JM Plaintiffs are authorized to dismiss, unconditionally and with prejudice (unless the Settlement Agreement shall otherwise be terminated in accordance with its terms), both of the following: (i) the claims of the JM Plaintiffs against the Settling Insurer asserted or assertable in the JM Included Action, and (ii) the JM Included Action itself.

18. IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED with respect to the Settlement Agreement dated as of April 24, 1986, between Reliance Insurance Company (on behalf of itself and as successor in interest to Standard Accident Insurance Company), on the one hand, and Manville Corporation, et al., on the other hand, that:

18.1 *Definitions.* As used in this Paragraph and in Paragraph 18.2 below, the following defined terms have the following meanings:

“Affiliate” of another Person means any Person directly or indirectly controlling, controlled by or under common control with, such other Person. The term “controlling” (including, with correlative meaning, the terms “controlled by” or “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

"Applicable Rate" means, for each one-year period or portion thereof during the period from April 1, 1986 to the Payment Date, the rate determined on April 1 of each calendar year, or the first Business Day thereafter, commencing April 1, 1986, equal to the most recently auctioned per annum market discount rate for fifty-two week U.S. Treasury bills, as published by the Board of Governors of the Federal Reserve System, plus one-half of one percent (1/2%).

"Business Day" means (i) with respect to deposits with this Court, any day on which this Court is open, and (ii) with respect to any other usage, any day except a Saturday, Sunday or other day on which commercial banks in New York City are authorized by law to close.

"Code" means the laws of the United States relating to bankruptcy or reorganization, including, without limitation, Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended.

"Final Order" means a judgment, order or other decree approved or entered by any State or Federal Court (including, without limitation, this Court) located in one of the States, or the District of Columbia, which judgment, order or other decree has not been reversed or stayed and as to which the time to appeal has expired and as to which no appeal, petition for rehearing or petition for certiorari is pending (or if such appeal has been filed or any such petition has been granted, it has been finally decided and such judgment, order or other decree has not been reversed or stayed).

"JCP No. 1072" means Judicial Council Proceeding No. 1072, presently pending in the Superior Court of the State of California, County of San Francisco, which includes the JM Included Action.

"JM Debtors" means Johns-Manville Corporation and each of its Affiliates which filed a petition for reorganization under Chapter 11 of the Code with this Court on August 26, 1982, unless such corporation has had or will have a plan of reorganization confirmed by an order of this Court which is a Final Order prior to the Plan Confirmation Date.

"JM Group" means the JM Settling Parties and the present, former and future directors, officers and employees of each of one or more of the JM Settling Parties.

"JM Included Action" means that portion of JCP No. 1072 represented by all of the allegations and claims of the JM Plaintiffs against the Settling Insurer and all of the allegations and claims of the Settling Insurer against the JM Plaintiffs.

"JM Plaintiffs" means Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Cor-

poration), Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.) and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.), each of which is a named plaintiff in JCP No. 1072.

“JM Settling Parties” means Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) who was or is an Affiliate of Manville Corporation or Johns-Manville Corporation.

“Payment Date” means three (3) Business Days after receipt by the Settling Insurer of notice from Manville Corporation pursuant to Paragraph 2(c) of the Settlement Agreement that the Plan Confirmation Date has occurred.

“Person” means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof.

“Plan” means the First Amended and Restated Plan of Reorganization, dated February 14, 1986, of the JM Debtors, as filed with this Court on February 14, 1986, and as amended, modified or superseded from time to time, in the form in which it is confirmed by a Final Order of this Court.

“Plan Confirmation Date” means the date on which the Plan Confirmation Order becomes a Final Order.

“Plan Confirmation Order” means the order entered by this Court confirming the Plan.

“Policies” means all policies which are at issue in the JM Included Action issued by Standard Accident Insurance company, to whom Reliance Insurance Company is the successor in interests and any other third party liability policy heretofore alleged or which may hereafter be alleged to have been issued by the Settling Insurer to Johns-Manville Corporation or any of the JM Settling Parties at any time.

“Policy Claims” means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be asserted by any Person against any or all members of the JM Group or against any or all members of the Settling Insurer Group based upon, arising out of or relating to the Policies. “Settlement Agreement” means the Settlement Agreement dated as of April 24, 1986, between the Settling Insurer, on the one hand, and Manville Corporation, et al., on the other hand.

"Settlement Amount" means Five Hundred Ninety-Two Thousand Six Hundred Forty-Five Dollars (\$592,645), plus interest accrued thereon at the Applicable Rate from (and including) April 1, 1986 until (and excluding) the Payment Date.

"Settlement Fund" means the Settlement Amount upon its deposit with (or in accordance with the written instructions of) the Clerk of this Court in accordance with the provisions of Paragraph 2(c) of the Settlement Agreement, and all investment income thereon and gains or losses attributable thereto after any such deposit.

"Settling Insurer" means the Reliance Insurance Company, on behalf of itself and as successor in interest to Standard Accident Insurance Company.

"Settling Insurer Group" means the Settling Insurer and its present and former Affiliates, and each of their present, former and future directors, officers, and employees.

"Settling Insurer Release" means a Release to be executed by the Settling Insurer on behalf of itself and its successors and assigns, substantially in the form attached as Exhibit C to the Settlement Agreement.

Where the context so requires, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

18.2 Orders.

[A] The disposition of the Settlement Fund is subject to the jurisdiction and further order of this Court;

(B) any and all claims, charges or encumbrances which might otherwise have been assessable or assertable by any Person against or with respect to the JM Group's rights and interests based upon, arising out of or related to the Policies, and any and all claims or causes of action in law, equity, admiralty or otherwise based upon, arising out of, or related to the Policies or which were or are assessable or assertable by any Person against the Policies or any or all members of the Settling Insurer Group, are transferred, and shall attach, solely to the Settlement Fund;

(C) upon payment by the Settling Insurer of its Settlement Amount in accordance with the terms and provisions of the Settlement Agreement, the Settling Insurer and its Settling Insurer Group shall have no further duties or obligations based upon, arising out of or related to the Policies and shall thereafter be released from any and all Policy Claims by any Person, and the Policies shall, upon such payment, be exhausted by payment of such Settlement

Amount and shall thereupon be null and void and of no further force or effect;

(D) all Persons are restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type or nature with respect to Policy Claims against any or all members of the Settling Insurer Group (it being understood that cross-claims which are unrelated to Policy Claims and which are asserted by any party to JCP No. 1072 against the Settling Insurer are excluded from this clause (D)), except that no Person who asserted prior to the date this Order becomes a Final Order a claim or cause of action against one or more of the Settling Insurer Group seeking any and all damages (other than or in addition to policy proceeds) for bad faith or other insurer misconduct alleged in connection with the handling or disposition of claims is enjoined from proceeding only with respect to such claim or cause of action; *provided, however*, that any Person who (i) asserts such a claim or cause of action where the alleged act or acts or failure or failures to act upon which such claim or cause of action is based arose after the date of this Order and/or who (ii) asserts a claim or cause of action against the Settlement Fund or files a proof of claim for, or receives, a payment under the Plan is so restrained and enjoined from commencing or continuing any such action against any or all members of the Settling Insurer Group; and (E) upon execution and delivery of the Settling Insurer Release in accordance with the terms and provisions of the Settlement Agreement, the JM Plaintiffs are authorized to dismiss, unconditionally and with prejudice (unless the Settlement Agreement shall otherwise be terminated in accordance with its terms), both of the following: (i) the claims of the JM Plaintiffs against the Settling Insurer asserted or assertable in the JM Included Action, and (ii) the JM Included Action itself.

19. IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED with respect to the Settlement Agreement dated as of October 21, 1985, between Rocky Mountain International Insurance Ltd., on the one hand, and Manville Corporation, et al., on the other hand, that:

19.1 *Definitions.* As used in this Paragraph and Paragraph 19.2 below, the following defined terms have the following meanings:

"Affiliate" of another Person means any Person directly or indirectly controlling, controlled by, or under common control with, such other Person; *provided, however*, that any reference to "Affiliates" of Manville Corporation, the JM Debtors or the JM Insureds shall not be deemed to include Rocky Mountain Interna-

tional Insurance Ltd. The term "controlling" (including, with correlative meaning, the terms "controlled by" or "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in New York City are authorized by law to close.

"Code" means the laws of the United States relating to bankruptcy or reorganization, including, without limitation,

Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended.

"Final Order" means a judgment, order or other decree approved or entered by any State or Federal Court (including, without limitation, this Court) located in one of the States, or the District of Columbia, which judgment, order or other decree has not been reversed or stayed and as to which the time to appeal has expired and as to which no appeal, petition for rehearing or petition for certiorari is pending (or if such appeal has been filed or any such petition has been granted, it has been finally decided and such judgment, order or other decree has not been reversed or stayed).

"JCP No. 1072" means Judicial Council Proceeding No. 1072, presently pending in the Superior Court of the State of California, County of San Francisco, which includes the JM Included Action.

"JM Debtors" means Johns-Manville Corporation and each of its Affiliates which filed a petition for reorganization under Chapter 11 of the Code with this Court on August 26, 1982, unless such corporation has had or will have a plan of reorganization confirmed by an order of this Court which is a Final Order prior to the Plan Confirmation Date.

"JM Group" means the JM Insureds and the present, former and future directors, officers and employees of each of one or more JM Insureds.

"JM Included Action" means that portion of JCP No. 1072 represented by the allegations and claims of the JM plaintiffs against the Settling Insurer with respect to the Policies and the allegations and claims of the Settling Insurer against the JM Plaintiffs with respect to the Policies.

"JM Insureds" means Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) who was or is an Affiliate of Manville Corporation or Johns-Manville Corporation.

“JM Plaintiffs” means Johns-Manville Corporation, Johns-Manville Sales Corporation, Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.) and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.), each of which is a named plaintiff in JCP No. 1072.

“Payment Date” means the fifth Business Day immediately following the Plan Confirmation Date, or such other later day as the parties may agree.

“Person” means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof.

“Plan” means the Joint Plan of Reorganization, dated October 17, 1983, of the JM Debtors, as filed with this Court on November 21, 1983, and as amended, modified or superseded from time to time, in the form in which it is confirmed by a Final Order of this Court.

“Plan Confirmation Date” means the date on which the Plan Confirmation Order becomes a Final Order.

“Plan Confirmation Order” means the order entered by this Court confirming the Plan.

“Policies” means insurance policy nos. 029003(77) (policy period July 1, 1977-July 1, 1978) and 029004(78) (policy period July 1, 1978-July 1, 1979), and only these policies, issued by the Settling Insurer to the JM Insureds.

“Policy Claims” means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be, asserted by any Person against any or all members of the JM Group or against any or all members of the Settling Insurer Group based upon, arising out of or relating to the Policies.

“Settlement Agreement” means the Settlement Agreement dated as of October 21, 1985, between the Settling Insurer, on the one hand, and Manville Corporation, et al., on the other hand.

“Settlement Amount” means the sum of (i) Fourteen Million Two Hundred Seventy Thousand Dollars (\$14,270,000) plus all accrued and unpaid interest thereon as of each December 31, commencing December 31, 1985 (such aggregate amount, the “Base Amount”) plus (ii) interest on the Base Amount, calculated on the basis of a 365-day year, accrued from July 1, 1985 until and including the Payment Date at a rate per annum, for each 6-month period or portion thereof commencing July 1, 1985, equal to the

6-month LIBOR as published in the Wall Street Journal on the first Business Day of such 6-month period.

"Settlement Fund" means the Settlement Amount upon its deposit with (or in accordance with the written instructions of) the Clerk of this Court in accordance with the provisions of Paragraph 2 of the Settlement Agreement, and all investment income thereon and gains or losses attributable thereto after any such deposit.

"Settling Insurer" means Rocky Mountain International Insurance Ltd.

"Settling Insurer Group" means the Settling Insurer and each of its present, former and future directors, officers, and employees. Where the context so requires, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

19.2 Orders.

(A) The disposition of the Settlement Fund is subject to the jurisdiction and further order of this Court;

(B) any and all claims, charges or encumbrances which might otherwise have been assessable or assertable by any Person against or with respect to the JM Group's rights and interests based upon, arising out of or related to the Policies, and any and all claims or causes of action in law, equity, admiralty or otherwise based upon, arising out of, or related to the Policies or which were or are assessable or assertable by any Person against the Policies or any or all members of the Settling Insurer Group, are transferred, and shall attach, solely to the Settlement Fund;

(C) upon payment by the Settling Insurer of its Settlement Amount in accordance with the terms and provisions of the Settlement Agreement, the Settling Insurer and its Settling Insurer Group shall have no further duties or obligations based upon, arising out of or related to the Policies and shall thereafter be released from any and all Policy Claims by any Person, and the Policies shall, upon such payment, be exhausted by payment of such Settlement Amount and shall thereupon be null and void and of no further force or effect;

(D) all Persons are restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type or nature for Policy Claims against any or all members of the Settling Insurer Group (it being understood that cross-claims which are unrelated to Policy Claims and which are asserted by any party to JCP No. 1072 against the Settling Insurer are excluded from this clause (D)), except that no Person who asserted prior to the date this Order becomes a Final Order a claim or cause of

action against one or more of the Settling Insurer Group seeking any and all damages (other than or in addition to policy proceeds) for bad faith or other insurer misconduct alleged in connection with the handling or disposition of claims is enjoined from proceeding only with respect to such claim or cause of action; *provided, however*, that any Person who (i) asserts such a claim or cause of action where the alleged act or acts or failure or failures to act upon which such claim or cause of action is based arose after the date of this Order and/or who (ii) asserts a claim or cause of action against the Settlement Fund or files a proof of claim for, or receives, a payment under the Plan is so restrained and enjoined from commencing or continuing any such action against any or all members of the Settling Insurer Group; and

(E) the JM Plaintiffs are authorized to dismiss, unconditionally and with prejudice (unless the Settlement Agreement shall otherwise be terminated in accordance with its terms), both of the following: (i) the claims of the JM Plaintiffs against the Settling Insurer asserted or assertable in the JM Included Action, and (ii) the JM Included Action itself.

20. IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED with respect to the Settlement Agreement dated as of October 10, 1986, between Rocky Mountain International Insurance Ltd., on the one hand, and Manville Corporation, et al., on the other hand, that:

20.1 *Definitions.* As used in this Paragraph and Paragraph 20.2 below, the following defined terms have the following meanings:

“Affiliate” of another Person means any Person directly or indirectly controlling, controlled by, or under common control with, such other Person; provided, however, that any reference to “Affiliates” of Manville Corporation, the JM Debtors or the JM Insureds shall not be deemed to include Rocky Mountain International Insurance Ltd. The term “controlling” (including, with correlative meaning, the terms “controlled by” or “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

“Aggregate Limit of Liability” means (subject to increase or reinstatement in accordance with the provisions of Paragraph 5 of the Settlement Agreement) one million dollars (\$1,000,000).

“Code” means the laws of the United States relating to bankruptcy or reorganization, including, without limitation, Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended.

"Final Order" means a judgment, order or other decree approved or entered by any State or Federal court (including, without limitation, this Court) located in one of the States, the territories of the United States, or the District of Columbia, which judgment, order or other decree has not been reversed or stayed and as to which the time to appeal has expired and as to which no appeal, petition for hearing, petition for rehearing or petition for certiorari is pending (or if such appeal has been filed or any such petition has been granted, it has been finally decided and such judgment, order or other decree has not been reversed or stayed).

"JCP No. 1072" means Judicial Council Coordination Proceeding No. 1072, presently pending in the Superior Court of the State of California, City and County of San Francisco, which includes the JM Included Action.

"JM Debtors" means Johns-Manville Corporation and each of its Affiliates which filed a petition for reorganization under Chapter 11 of the Code with this Court on August 26, 1982, unless such corporation has had or will have a plan of reorganization confirmed by an order of this Court which is a Final Order prior to the Plan Confirmation Date.

"JM Group" means the JM Insureds and the present, former and future directors, officers and employees of one or more JM Insureds.

"JM Included Action" means that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against the Settling Insurer with respect to the Policy and the allegations and claims of the Settling Insurer against the JM Plaintiffs with respect to the Policy.

"JM Insureds" means Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) who is an Affiliate of Manville Corporation or Johns-Manville Corporation.

"JM Plaintiffs" means Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Corporation), Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.) and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.), each of which is a named plaintiff in JCP No. 1072.

"Person" means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof.

"Plan" means the revised form of the Second Amended and Restated Plan of Reorganization of Manville Corporation dated

May 23, 1986, as filed with this Court on June 4, 1986, and as amended, modified or superseded from time to time, in the form in which it is confirmed by a Final Order of this Court.

"Plan Confirmation Date" means the date on which the Plan Confirmation Order becomes a Final Order.

"Plan Confirmation Order" means the order entered by this Court confirming the Plan.

"Policy" means the following insurance policy (and only the following insurance policy) issued by the Settling Insurer to the JM Insureds:

<i>Policy Number</i>	<i>Policy Period</i> <i>(for information only)</i>
29002	7/1/77-7/1/76

"Policy Claims" means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be, asserted by any Person against any or all members of the JM Group or against any or all members of the Settling Insurer Group based upon, arising out of, or relating to the Policy.

"Settlement Agreement" means the Settlement Agreement, dated as of October 10, 1986, between Rocky Mountain International Insurance Ltd., on the one hand, and Manville Corporation, et al., on the other hand.

"Settling Insurer" means Rocky Mountain International Insurance Ltd.

"Settling Insurer Group" means the Settling Insurer and each of its present, former and future directors, officers and employees.

Where the context so requires, each defined term stated in a singular form shall include the plural form and each defined term stated in a plural form shall include the singular form.

20.2 Orders.

(A) Unless and until the Settlement Agreement terminates, at and after the date of this Order, the Settling Insurer shall have no duties or obligations to any Person based upon, arising out of or related to the Policy except as may be imposed by the Settlement Agreement;

(B) unless and until the Settlement Agreement terminates, upon payment by the Settling Insurer of the Aggregate Limit of Liability in accordance with the terms and provisions of the Settlement Agreement, the Settling Insurer and the Settling Insurer Group shall have no further duties or obligations based upon, arising out of or related to the Policy and shall thereafter be released from any and all Policy Claims by, any Person, and the Policy shall, upon

such payment, be exhausted by payment of such amount and shall thereupon be null and void and of no further force or effect;

(C) unless and until the Settlement Agreement terminates, all Persons are restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type or nature for Policy Claims against any or all members of the Settling Insurer Group (it being understood that cross-claims which are unrelated to Policy Claims and which are asserted by any party to JCP No. 1072 against the Settling Insurer are excluded from this clause (C)), except that no Person who asserted prior to the date this Order becomes a Final Order a claim or cause of action against one or more of the Settling Insurer Group seeking any and all damages (other than or in addition to policy proceeds) for bad faith or other insurer misconduct alleged in connection with the handling or disposition of claims is enjoined from proceeding only with respect to such claim or cause of action; *provided, however*, that any Person who asserts such a claim or cause of action where the alleged act or acts or failure or failures to act upon which such claim or cause of action is based arose after the date of this Order and/or who files a proof of claim for, or receives, a payment under the Plan is so restrained and enjoined from commencing or continuing any such action against any or all members of the Settling Insurer Group; and

(D) upon payment by the Settling Insurer of an amount equal to the Aggregate Limit of Liability in accordance with the terms and provisions of the Settlement Agreement, the JM Plaintiffs are authorized to dismiss, unconditionally and with prejudice (unless the Settlement Agreement shall otherwise be terminated in accordance with its terms), both of the following: (i) the claims between the JM Plaintiffs, on the one hand, and the Settling Insurer, on the other hand, asserted or assertable in the JM Included Action, and (ii) the JM Included Action (with respect to such claims) itself.

21. IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED with respect to the Settlement Agreement dated as of October 22, 1986, between Royale Belge, on the one hand, and Manville Corporation, et al., on the other hand, that:

21.1 *Definitions.* As used in this Paragraph and Paragraph 21.2 below, the following defined terms have the following meanings:

"Affiliate" of another Person means any Person directly or indirectly controlling, controlled by, or under common control with, such other Person. The term "controlling" including, with correlative meaning, the terms "controlled by" or "under common control

with") as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

"JCP No. 1072" means Judicial Council Proceeding No. 1072, presently pending in the Superior Court of the State of California, City and County of San Francisco.

"JM Group" means the JM Insureds and the present, former and future directors, officers and employees of each of one or more of the JM Insureds.

"JM Insureds" means Manville Corporation, Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Corporation), Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.), Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.), and each other Person (except natural persons) who is an Affiliate of Manville Corporation and Johns-Manville Corporation.

"Person" means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof.

"Policies" means Royale Beige policy no. UPA 0273 (policy dates 7/01/82 to 7/01/83) and policy no. 1 251 223/81 (policy dates 7/01/81 to 7/01/82) issued by the Settling Insurer to the JM Insureds, as such policies may be modified, amended or supplemented to the date of the Settlement Agreement.

"Policy Claims" means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be asserted by any Person against any or all members of the Settling Insurer Group based upon, arising out of or relating to the Policies.

"Settlement Agreement" means the Settlement Agreement dated as of October 22, 1986, between the Settling Insurer, on the one hand, and Manville Corporation, et al., on the other hand.

"Settlement Amount" means Four Hundred Seventy Five Thousand Dollars (U.S. \$475,000).

"Settlement Fund" means the Settlement Amount, together with all amounts paid by the Settling Insurer pursuant to Paragraph 5 of the Settlement Agreement, upon deposit of such amounts with (or in accordance with the written instructions of) the Clerk of this Court in accordance with the provisions of the Settlement Agreement and the Trust Agreement, and all investment income thereupon

and gains or losses attributable thereto after any such deposit.

"Settling Insurer" means Royale Belge.

"Settling Insurer Group" means the Settling Insurer and its respective present or former Affiliates and each of their present, former and future directors, officers, stockholders (in their capacity as such), members, members' agents, insurance underwriters, and employees.

"Trust" means the trust established pursuant to Paragraphs 2 and 9 of the Settlement Agreement and administered pursuant to the Trust Agreement.

"Trust Agreement" means the trust agreement dated as of October 22, 1986 entered into by the parties hereto and Mellon Bank, N.A., a national banking association, the trustee under the Trust Agreement, with respect to the terms and provisions governing the administration of the Trust.

Where the context so requires, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

21.2 Orders.

(A) The disposition of the Settlement Fund is subject to the jurisdiction and further order of this Court;

(B) unless and until the Settlement Agreement terminates in accordance with the express provisions thereof, any and all claims, charges or encumbrances which might otherwise have been assessable or assertable by any Person against or with respect to the JM Group's rights and interests based upon, arising out of or related to any or all of the Policies, and any and all claims or causes of action in law, equity, admiralty or otherwise based upon, arising out of, or related to any or all of the Policies or which were or are assessable or assertable by any Person against any or all of the Policies or any or all members of the Settling Insurer Group are transferred, and shall attach, solely to the Settlement Fund;

(C) unless and until the Settlement Agreement terminates in accordance with the express provisions thereof, the Settling Insurer Group shall have no duties or obligations based upon, arising out of or related to the Policies, and shall be released from any Policy Claims by any Person and the Policies shall, upon deposit of the Settlement Amount with (or in accordance with the written instructions of) the Clerk of this Court, be deemed exhausted and shall thereupon be null and void and of no further force or effect as to any member of the Settling Insurer Group; and

(D) unless and until the Settlement Agreement terminates in accordance with the express provisions thereof, all Persons are re-

strained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type or nature with respect to Policy Claims against any or all members of the Settling Insurer Group (it being understood that cross-claims asserted by any party to JCP No. 1072 against the Settling Insurer and are unrelated to Policy Claims are excluded from this clause (D)).

22. IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED with respect to the Settlement Agreement dated as of April 23, 1986, between Sun Insurance Office, Limited, the London Assurance, and Sun Alliance Insurance Company, on the one hand, and Manville Corporation, et al., on the other hand, that:

22.1 *Definitions.* As used in this Paragraph and Paragraph 22.2 below, the following defined terms have the following meanings:

“Affiliate” of another Person means any Person directly or indirectly controlling, controlled by, or under common control with, such other Person, and includes any Person (except natural persons) referred to in the Policies by the word “Affiliated.” The term “controlling” (including, with correlative meaning, the terms “controlled by” or “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

“Allied” means any Person (except natural persons) referred to in the Policies by the word “Allied.”

“Applicable Rate” means for each three-month period commencing on and including April 15, 1986 to and excluding the Payment Date (unless the interest accrual period is extended pursuant to Paragraph 2(i) of the Settlement Agreement), the rate determined on the first Business Day of such period equal to the per annum market discount rate for the most recently auctioned thirteen-week U.S. Treasury Bills, as published by the Board of Governors of the Federal Reserve System and quoted in the “Money Rates” column of the Wall Street Journal.

“Business Day” means (i) with respect to deposits with this Court, any day on which this Court is open, and (ii) with respect to any other usage, any day except a Saturday, Sunday or other day on which commercial banks in New York City are authorized by law to close.

“JCP No. 1072” means Judicial Council Proceeding No. 1072, presently pending in the Superior Court of the State of California, City and County of San Francisco, which includes the JM Included Action.

“JM Group” means the JM Insureds and the present, former and future directors, officers and employees of each of one or more of the JM Insureds.

“JM Included Action” means that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against the Settling Insurer Group with respect to the Policies and the allegations and claims of the Settling Insurer Group against the JM Plaintiffs with respect to the Policies.

“JM Insureds” means Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) who was or is a Subsidiary, Allied or Affiliate of Manville Corporation or Johns-Manville Corporation, and includes Canadian Johns-Manville Company Limited, sometimes referred to as Canadian Johns-Manville Co. Ltd., and any Allied, Affiliate or Subsidiary in which it has or had an interest, or any insured (except natural persons) as defined in the Policies.

“JM Plaintiffs” means Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Corporation), Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.) and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.), each of which is a named plaintiff in JCP No. 1072 and Johns-Manville Canada Inc., the named plaintiff in the Ontario Action.

“Ontario Action” means the judicial proceeding entitled *Johns-Manville Canada, Inc. v. Sun Alliance Insurance Company, Sun Insurance Office Limited, and The London Assurance*, Action No. 45279/79, presently pending in the Supreme Court of Ontario, in the municipality of Metropolitan Toronto, in the Province of Ontario, Canada.

“Payment Date” means seven (7) Business Days after Manville Corporation delivers the notice and a copy of the Order provided for in Paragraph 2(d) of the Settlement Agreement to the Settling Insurer Group.

“Person” means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof.

“Policies” means the following insurance policies (and only the following insurance policies) issued by Sun Insurance Office, Limited to the JM Insureds:

<i>Policy Number</i>	<i>Policy Periods (for information only)</i>
65 014	4/01/46-4/01/49
65 050	4/01/49-4/01/52
65 087	4/01/52-7/01/52
65 088	7/01/52-7/01/55
65 5115	7/01/55-7/01/58
65 8543	7/01/58-7/01/61
65 11550 (and renewal numbers GRS 58011 and GRS 78063 to Policy Number 65 11550)	7/01/61-7/01/70

“Policy Claims” means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be, asserted by any Person against any or all members of the JM Group or against any or all members of the Settling Insurer Group based upon, arising out of or relating to the Policies.

“Settlement Agreement” means the Settlement Agreement dated as of April 23, 1986 between the Settling Insurer Group, on the one hand, and Manville Corporation, et al., on the other hand.

“Settlement Amount” means the sum of (i) Twenty-Seven Million Two Hundred Fifty Thousand United States Dollars (U.S. \$27,250,000) (the “Base Amount”) and (ii) interest, compounded quarterly, on the Base Amount at the Applicable Rate for the period commencing on and including April 15, 1986 and to but excluding the Payment Date.

“Settlement Fund” means the Settlement Amount, together with any interest payable pursuant to Paragraph 2(i) of the Settlement Agreement, upon the deposit thereof with (or in accordance with the written instructions of) the Clerk of this Court in accordance with the provisions of Paragraph 2(e) of the Settlement Agreement, and all investment income thereon and gains or losses attributable thereto after any such deposit.

“Settling Insurers” means Sun Insurance Office, Limited and The London Assurance.

“Settling Insurer Group” means the Settling Insurers and Sun Alliance Insurance Company.

“Subsidiary” means any Person(except natural persons) referred to in the Policies by the word “Subsidiary.”

Where the context so requires, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

22.2 Orders.

(A) The disposition of the Settlement Fund is subject to the jurisdiction and further order of this Court;

(B) unless and until the Settlement Agreement terminates, any and all claims, charges or encumbrances which might otherwise have been assessable or assertable by any Person against or with respect to the JM Group's rights and interests based upon, arising out of or related to the Policies, and any and all claims or causes of action in law, equity, admiralty or otherwise based upon, arising out of, or related to the Policies or which were or are assessable or assertable by any Person against the Policies or any or all members of the Settling Insurer Group, are transferred, and shall attach, solely to the Settlement Fund;

(C) unless and until the Settlement Agreement terminates, the Settling Insurer Group shall have no further duties or obligations based upon, arising out of or related to the Policies and shall hereafter be released from any and all Policy Claims by any Person, and the Policies shall, upon payment of the Settlement Amount, be exhausted by payment of such amount and shall thereupon be null and void and of no further force or effect;

(D) unless and until the Settlement Agreement terminates, all Persons are restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type or nature with respect to Policy Claims against any or all members of the Settling Insurer Group (it being understood that cross-claims which are unrelated to Policy Claims and which are asserted by any party to JCP No. 1072 against the Settling Insurers are excluded from this clause (D)); and

(E) upon payment of the Settlement Amount and any interest payable pursuant to Paragraph 2(i) of the Settlement Agreement in accordance with the terms and provisions of the Settlement Agreement, the JM Plaintiffs are authorized to dismiss, unconditionally and with prejudice (unless the Settlement Agreement shall otherwise be terminated in accordance with its terms), both of the following: (i) the claims of the JM Plaintiffs against the Settling Insurer Group asserted or assertable in the JM Included Action and the Ontario Action, and (ii) the JM Included Action and the Ontario Action themselves.

23. IT IS HEREBY DETERMINED with respect to the Settlement Agreement dated as of July 18, 1984, between the Settling

Insurer Parties (all capitalized terms being used as defined in Paragraph 23.1 below), on the one hand, and Manville Corporation, et al., on the other hand, that:

(1) The Settling Insurer Parties issued or are or may be responsible for the Policies and the Policies constitute and include property of the JM Debtors' estate;

(2) serious and substantial disputes have arisen among Manville Corporation, the Settling Insurer Parties and others concerning the availability and extent of coverage and other obligations under the Policies;

(3) on March 31, 1980, the JM Plaintiffs commenced an action in the Superior Court of the State of California, for the City and County of San Francisco, against the Settling Insurer Parties and other insurers of the JM Insureds, which action has been coordinated with other suits in JCP No. 1072;

(4) prior to the filing of the JM Debtors' petition for reorganization under Chapter 11 of the Code on August 26, 1982 lawsuits on behalf of more than 16,000 persons had been filed against the JM Group and/or its insurers, including one or more of the Settling Insurer Parties, claiming damages for asbestos-related claims, including (but not limited to) health, personal injury or property damage claims;

(5) no fewer than 6,000 additional lawsuits would have been commenced by January 1, 1984 against the JM Group and/or its insurers, but for the provisions of 11 U.S.C. 362 (a) and the orders of this Court issued pursuant to 11 U.S.C. 362(a) and 105; and

(6) the settlement provided for in the Settlement Agreement is a fair and reasonable resolution of the disputes between Manville Corporation and the JM Plaintiffs and the Settling Insurer Parties regarding the Policies, and approval of the Settlement Agreement will materially enhance the JM Debtors' ability to successfully and effectively reorganize under Chapter 11 of the Code.

IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED with respect to the Settlement Agreement dated as of July 18, 1984, between the Settling Insurer Parties, on the one hand, and Manville Corporation, et al., on the other hand, that:

23.1 *Definitions.* As used in this Paragraph and Paragraph 23.2 below, the following defined terms have the following meanings:

"Affiliate" of another Person means any Person directly or indirectly controlling, controlled by, or under common control with, such other Person, and shall include a Subsidiary. The term "controlling" (including, with correlative meaning, the terms "controlled by" or "under common control with"), as used with respect to

any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

"Applicable Rate" means, for each one-year period or portion thereof, the rate determined on the first Business Day of such period equal to the most recently auctioned per annum market discount rate for one-year U.S. Treasury bills, as published by the Board of Governors of the Federal Reserve System, plus one (1%) percent.

"British Company" means (i) any company or corporation (as presently or previously constituted) which is or is alleged to be a subscribing insurer to one or more of the Policies listed on Exhibit A-3 to the Settlement Agreement and (ii) any company, corporation or other entity which is a party to the Settlement Agreement by reason of being successor, assignee or otherwise of a British Company and which is so listed on the signature pages of the Settlement Agreement.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in New York City are authorized by law to close.

"Code" means the laws of the United States relating to bankruptcy or reorganization, including, without limitation, Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended.

"Dismissal Agreement" means the "Agreement for Dismissal of Litigation in Contemplation of Settlement" dated July 18, 1984, entered into by the parties to the Settlement Agreement with respect to the JM Included Action.

"Dismissals" means the Dismissals With Prejudice and the Dismissals Without Prejudice provided for in the Dismissal Agreement.

"Effective Date" means July 18, 1984.

"Final Order" means a judgment, order or other decree approved or entered by any State or Federal court (including, without limitation, this Court) located in one of the States, or the District of Columbia, which judgment, order or other decree has not been reversed or stayed and as to which the time to appeal has expired and as to which no appeal, petition for rehearing or petition for certiorari is pending (or if such appeal has been filed or any such petition has been granted, it has been finally decided and such judgment, order or other decree has not been reversed or stayed).

"JCP No. 1072" means Judicial Council Proceeding No. 1072, presently pending in the Superior Court of the State of California, County of San Francisco, which includes the JM Included Action.

"JM Debtors" means Johns-Manville Corporation and each of its Affiliates which filed a petition for reorganization under Chapter 11 of the Code with this Court on August 26, 1982, unless such corporation has had or will have a plan of reorganization confirmed by an order of this Court which is a Final Order prior to the Plan Confirmation Date.

"JM Employees" means present, former or future directors, officers and employees of one or more JM Insureds.

"JM Group" means the JM Insureds and the JM Employees.

"JM Included Action" means that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against the Settling Insurers and the allegations and claims of the Settling Insurers against the JM Plaintiffs.

"JM Insureds" means Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) who was or is an Affiliate of Manville Corporation or Johns-Manville Corporation.

"JM Plaintiffs" means Johns-Manville Corporation, Johns-Manville Sales Corporation, Johns-Manville International Corporation, Johns-Manville Canada, Inc. (now known as JM Asbestos Inc.) and Johns-Manville Amiante Canada, Inc. (now known as JM Asbestos Inc.), each of which is a named plaintiff in JCP No. 1072.

"JM Releases" means the releases to be executed by Manville Corporation and each of the JM Plaintiffs on behalf of themselves and each other JM Insured and their respective successors and assigns, in substantially the form attached to the Settlement Agreement as Exhibit C.

"Lloyd's Syndicate" means (i) any syndicate of Lloyd's of London (including each member thereof as such syndicate is presently or was previously constituted) which is or is alleged to be a subscribing insurer to one or more of the Policies listed on Exhibit A-3 to the Settlement Agreement and (ii) any syndicate or entity which is a party to the Settlement Agreement by reason of being a successor, assignee or otherwise of a Lloyd's Syndicate and which is so listed on the signature pages thereof.

"Payment Date" means the later of (i) December 31, 1985 and (ii) the fifth Business Day immediately following the Plan Confirmation Date, or such other later day as the parties may agree.

"Person" means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof and any Person who presently

has or in the future might have asbestos-related claims (including, without limitation, health, personal injury or property damage claims) against any or all members of the JM Group or against any or all members of the Settling Insurer Group.

"Plan" means the Joint Plan of Reorganization, dated October 17, 1983, of the JM Debtors, as filed with this Court on November 21, 1983, and as amended, modified or superseded from time to time, in the form in which it is confirmed by an order of this Court which is a Final Order.

"Plan Confirmation Date" means the date on which the Plan Confirmation Order becomes a Final Order.

"Plan Confirmation Order" means the order entered by this Court confirming the Plan.

"Policies" means the insurance policies listed in and the documents attached to the Settlement Agreement in Exhibits A-1, A-2 and A-3, in each case as may be addressed, modified, amended or supplemented; provided, however, that the term "Policies" does not and shall not include (i) that portion of, or the coverage provided under, any such policy or agreement issued by The Travelers Indemnity Company or any of its affiliates providing workers' compensation or similar protection (a "Travelers WC Policy"), but only to the extent that such portion or coverage relates to claims which cannot be settled, compromised or otherwise resolved under applicable law or (ii) that portion of, or the coverage provided under, any Travelers WC Policy under which an award or other payment was being made as of the date of the Settlement Agreement.

"Policy Claims" means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be, asserted by any Person against any or all members of the JM Group or against any or all members of the Settling Insurer Group based upon, arising out of or relating to any or all of the Policies.

"Settlement Agreement" means the Settlement Agreement dated as of July 18, 1984, between the Settling Insurer Parties, on the one hand, and Manville Corporation, et al., on the other hand.

"Settlement Amount" means, with respect to each Settling Insurer Party, an amount equal to (1) the sum of (a) the amount set forth opposite its name on the signature pages to the Settlement Agreement *plus* (b) the sum of the amounts (calculated as set forth in the next sentence) for (i) initially, the one-year period (or portion thereof) commencing on January 1, 1986 and ending on December 31, 1986 or the Payment Date, whichever is earlier, and (ii) thereafter, for each one-year period (or portion thereof) com-

mencing on the last day of the preceding one-year period and ending one year thereafter or on the Payment Date, whichever is earlier, minus (2) on a dollar-for-dollar basis, the aggregate amount of any payments made by such Settling Insurer Party during the period from and including the Effective Date to and including the Payment Date for which such Settling Insurer Party is entitled to indemnification pursuant to Paragraph 5 of the Settlement Agreement. The amounts referred to in clause (b) above shall be calculated as follows: (1) for the period referred to in subclause (i) above, the Applicable Rate per annum on the amount referred to in clause (a) above for the period from (and including) January 1, 1986 to (but excluding) the last day of such period and (2) for each succeeding period referred to in subclause (ii) above, the Applicable Rate per annum on the sum of the amount referred to in clause (a) above and each other amount calculated pursuant to this sentence for each prior period calculated pursuant to subclause (ii) for the period from (and including) the first day of such period to (but excluding) the last day of such period.

"Settlement Fund" means the aggregate of all Settlement Amounts deposited with (or in accordance with the written instructions of) the Clerk of this Court in accordance with the provisions of Paragraph 2 of the Settlement Agreement, and after such deposit all investment income thereon and gains or losses attributable thereto.

"Settling Insurer Group" means the Settling Insurers and their respective present or former Affiliates, and present, former or future directors, officers, stockholders (in their capacity as such), managing agents, members, members' agents, insurance underwriters and employees. The "Settling Insurer Group" of a Settling Insurer Party means the members of the Settling Insurer Party and their respective present or former Affiliates, and present, former or future directors, officers, stockholders (in their capacity as such), managing agents, members, members' agents, insurance underwriters and employees; *provided*, that, for purposes of this definition only, the Settling Insurer Party composed of Lloyd's Syndicates and British Companies shall also include all Lloyd's Syndicates and British Companies which are or are alleged to be subscribing insurers to one or more of the Policies listed on Exhibit A-3 to the Settlement Agreement.

"Settling Insurer Party" means any one of The Travelers Indemnity Company on behalf of itself and its Affiliates; The Home Insurance Company on behalf of itself and its Affiliates; the following Lloyd's Syndicates (including the underwriting members

thereof): 15, 16, 33, 48, 53, 56, 69, 90, 92, 108, 109, 112, 130, 131, 164, 204, 210, 211, 212, 219, 235, 350, 283, 297, 311, 316, 334, 347, 365, 373, 417, 422, 427, 431, 433, 440, 448, 458, 469, 472, 484, 490, 499, 507, 517, 555, 576, 581, 583, 604, 605, 620, 634, 637, 650, 652, 660, 665, 674, 677, 707, 755, 763, 768, 791, 800, 819, 845, 849, 884, 896, 917, 947, 964, 975, 989, 990 and 998; the following Lloyd's Syndicates (as such syndicate number was used at the time such syndicate allegedly subscribed to one or more of the Policies identified on Exhibit A-3 to the Settlement Agreement, and including the underwriting members thereof): 36, 57, 86, 88, 110, 151, 169, 174, 188, 194, 208, 214, 223, 233, 238, 274, 286, 300, 301, 315, 317, 371, 397, 405, 420, 425, 463, 470, 475, 476, 479, 531, 596, 598, 621, 629, 651, 656, 687, 688, 711, 713, 729, 748, 761, 767, 793, 795, 796, 797, 838, 851, 857, 867, 870, 900, 905 and 987; and the following British Companies: Andrew Weir Insurance Company Limited (as well as A. Weir, A. Weir Marine and Andrew Weir), British Aviation Insurance Company Limited (as well as BAIC), City General Insurance Company Limited (as well as City General), The Dominion Insurance Company Limited (as well as CF & AU, CF & AU Group H, Anglo-Saxon Insurance Association Limited, London & Edinburgh Insurance Company and Vanguard Insurance Company Limited), Eagle Star Insurance Company Limited (Aviation) (as well as Eagle Star, Eagle Star Aviation and Eagle Star Aviation A/C), English & American Insurance Company Limited (Non-Marine) (as well as E&A and E&A Non-Marine), English & American Insurance Company Limited (Marine) (as well as E&A Marine and Economic), Excess Insurance Company Limited (as well as Excess and Excess A), The Lombard Elizabethan Insurance plc (as well as Lombard, Lombard Insurance Company Limited and Lombard Marine & General Insurance Company Limited), London Guaranty and Reinsurance Co. Limited (as well as Southern and Southern Insurance Company Limited), Orion Insurance Company plc (as well as Orion, Orion "T", Orion "T" A/C, Orion "T" A/C Aviation, Orion T Aviation A/C, Orion Group Aviation, Orion Group Aviation A/C, Orion Group Aviation Account, Orion/Drake/Sphere/New India Group Aviation A/C, Orion Drake Sphere New India Group Aviation A/C, Orion Drake Sphere Aviation, Orion "T" Marine A/C, Orion Non-Marine, Orion N/M, Orion N/M A/C, Orion (Non-Marine Account), Drake Insurance Company Limited, Sphere Insurance Company Limited, New India Assurance Company Limited and Orion Insurance Company Limited), Provincial Insurance plc (as well as Hull U/Rs Asscn., Hull Uwrs. Assocn. A. Account, Hull Under-

writers Association Limited, London Overseas A Account, London & Overseas Insurance Company Ltd. A Account and London & Overseas Insurance Company Limited), Prudential Assurance Company Limited (as well as Prudential and Prudential (City)), United Standard Insurance Company Limited (as well as United Standard), World Auxiliary Corporation Limited (as well as World Auxiliary, W. Aux. and W. Auxiliary).

"Subsidiary" of any Person means any corporation or other entity of which securities or voter ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions is at the time owned directly or indirectly by such Person or one or more of its Subsidiaries or by such Person or one or more of its Subsidiaries.

Where the context so requires, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

23.2 *Orders.*

(A) The Settlement Agreement is, in all respects, approved, and the execution, delivery and performance of the Settlement Agreement and certain other documents referred to therein (including, without limitation, the Dismissal Agreement, the Dismissals and the JM Releases) by Manville Corporation on behalf of itself and its Affiliates and by each of the JM. Plaintiffs are hereby ratified and confirmed, and such parties are hereby authorized to execute and deliver such additional documents and do such things as may be necessary to perform, implement and effectuate the Settlement Agreement and this Order;

(B) in accordance with Bankruptcy Rule 7067 and with the terms and conditions set forth in the Settlement Agreement, each Settling Insurer Party shall, on the Payment Date, (i) deposit with the Clerk of this Court (or pursuant to his written instructions as this Court, by subsequent order, may direct) its Settlement Amount in accordance with the provisions of Paragraph 2 of the Settlement Agreement, and (ii) within twenty (20) days thereafter provide to this Court and Manville Corporation an explanation of the computation of said Settlement Amount, and the Clerk is authorized and directed to receive and deposit said Settlement Amounts in an interestbearing account to be approved by this Court;

(C) the disposition of the Settlement Fund shall remain subject to the jurisdiction and further orders of, and proceedings in, this Court;

(D) any and all claims, charges or encumbrances which might otherwise have been assessable or assertable by any Person against or with respect to the JM Group's rights and interests based upon, arising out of or related to any or all of the Policies, and any and all claims or causes of action in law, equity, admiralty or otherwise based upon, arising out of, or related to any or all of the Policies or which were or are assessable or assertable by any Person against any or all of the Policies or any or all members of the Settling Insurer Group, are transferred, and shall attach, solely to the Settlement Fund;

(E) upon payment by each Settling Insurer Party of its Settlement Amount in accordance with the terms and provisions of the Settlement Agreement, each such Settling Insurer Party and its Settling Insurer Group (including, in the case of the Settling Insurer Group which includes Lloyd's Syndicates and British Companies, all Lloyd's Syndicates and British Companies which are or are alleged to be subscribing insurers to one or more of the Policies listed on Exhibit A-3 to the Settlement Agreement) shall have no further duties or obligations based upon, arising out of or related to the Policies and shall thereafter be released from any and all Policy Claims by any Person, and all of the Policies of any or all members of such Settling Insurer Group shall upon such payment be exhausted by payment of such Settlement Amount and shall thereupon be null and void and of no further force or effect;

(F) upon deposit of the Settlement Amounts as set forth in Paragraph (B) above, all Persons are permanently restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type or nature for Policy Claims against any or all members of the Settling Insurer Group (it being understood that cross-claims which are unrelated to Policy Claims and which are asserted by any party to JCP No. 1072 against the Settling Insurer Parties are not so enjoined), except that no Person who asserted prior to the date this Order becomes a Final Order a claim or cause of action against any and all of the Settling Insurer Group seeking any and all damages (other than or in addition to policy proceeds) for bad faith or other insurer misconduct alleged in connection with the handling or disposition of claims is enjoined from proceeding only with respect to such claim or cause of action; *provided, however*, that any Person who (i) asserts such a claim or cause of action where the alleged act or acts or failure or failures to act upon which such claim or cause of action is based arose after the date of this Order and/or who (ii) asserts a claim or cause of action against the Settlement Fund or files a proof of

claim for, or receives, a payment under the Plan, is so restrained and enjoined from commencing or continuing any such action against any or all members of the Settling Insurer Group; and

(G) the dismissal, unconditionally and with prejudice, on the Payment Date of both: (i) the claims between the JM Plaintiffs, on the one hand, and the Settling Insurer Parties, on the other hand, asserted or assertable in the JM Included Action, and (ii) the JM Included Action itself, is hereby approved and authorized.

Dated: December 18, 1986

New York, New York

ENTER,

/s/ *Burton R. Lifland*
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In Re : In Proceedings for A
JOHNS-MANVILLE : Reorganization Under
CORPORATION, *et al.*, : Chapter 11
Debtors. :
: Case Nos. 82-B-11656
: Through 82-B-11676 (BRL)
-----X

ORDER

WHEREAS, Manville Corporation, for and on behalf of itself and each of its affiliates, Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Corporation), Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.), and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.), debtors and debtors in possession in these proceedings (collectively, "Manville"), have entered into a settlement agreement (the "Settlement Agreement"), with Continental Casualty Company and Columbia Casualty Company (collectively, the "Settling Insurers");

WHEREAS, by application dated December 15, 1986 (the "Application") Manville sought approval of the Bankruptcy Court, pursuant to Rule 9019 of the Rules of Bankruptcy Procedure, of the Settlement Agreement;

WHEREAS, upon notice duly given, only one objection having been filed, and an evidentiary hearing being unnecessary in light of the nature of said objection; and

WHEREAS, the Court has duly considered the Application and the materials referred to therein, and the Court is familiar with the underlying issues and objection by reason of prior hearings on substantially similar applications and prior objection by the same objectors;

IT IS HEREBY ORDERED AND ADJUDGED AND DECREED that after consideration of the foregoing and the materials referred to above:

The Settlement Agreement, and the execution, delivery and performance of the Settlement Agreement by Manville, are hereby approved pursuant to Rule 9019 of the Rules of Bankruptcy Procedure.

IT IS HEREBY FURTHER ORDERED AND ADJUDGED AND DECREED that:

1. *Definitions.* As used in this Order, the following defined terms have the following meanings:

“Affiliate” of another Person means any parent organization, subsidiary organization, or any Person directly or indirectly controlling, controlled by, or under common control with, such other Person. The term “controlling” (including, with correlative meaning, the terms “controlled by” or “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such Person, whether through the ownership of securities, by contract or otherwise.

“Code” means the laws of the United States relating to bankruptcy or reorganization, including, without limitation, Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as amended.

“Final Order” means a judgment, order or other decree approved or entered by any State or Federal Court (including, without limitation, this Court) located in one of the States, or the District of Columbia, which judgment, order or other decree has not been reversed or stayed and as to which the time to appeal has expired and as to which no appeal, petition for rehearing or petition for certiorari is pending (or if such appeal has been filed or any such petition has been granted, it has been finally decided and such judgment, order or other decree has not been reversed or stayed).

“JCP No. 1072” means Judicial Council Proceeding No. 1072, presently pending in the Superior Court of the State of California, City and County of San Francisco, which includes the JM Included Action.

“JM Debtors” means Johns-Manville Corporation and each of its Affiliates which filed a petition for reorganization under Chapter 11 of the Code with this Court on August 26, 1982, unless such corporation has had or will have a plan of reorganization confirmed by an order of this Court which is a Final Order prior to the Plan Confirmation Date.

“JM Group” means the JM Insureds and the present, former and future directors, officers and employees of each of one or more JM Insureds.

“JM Included Action” means that portion of JCP No. 1072 represented by the allegations and claims of the JM Plaintiffs against the Settling Insurers with respect to the Policies and the allegations and claims of the Settling Insurers against the JM Plaintiffs with respect to the Policies.

“JM Insureds” means Manville Corporation, the JM Plaintiffs and each other Person (except natural persons) who was or is an Affiliate of Manville Corporation or JohnsManville Corporation.

“JM Plaintiffs” means Johns-Manville Corporation, Johns-Manville Sales Corporation (now known as Manville Sales Corporation), Johns-Manville International Corporation, Johns-Manville Canada Inc. (now known as JM Asbestos Inc.) and Johns-Manville Amiante Canada Inc. (now known as JM Asbestos Inc.), each of which is a named plaintiff in JCP No. 1072.

“Person” means an individual, a corporation, a partnership, an association, a trust or any other entity or organization, including, without limitation, any government or political subdivision or an agency or instrumentality thereof.

“Plan” means the Second Amended and Restated Plan of Reorganization of Manville Corporation dated August 22, 1986, as it may be amended, modified or superseded from time to time, in the form in which it is confirmed by a Final Order of this Court.

“Plan Confirmation Date” means the date on which the Plan Confirmation Order becomes a Final Order.

“Plan Confirmation Order” means the order entered by this Court confirming the Plan.

“Policies” mean the following insurance policies (and only the following insurance policies) issued by the Settling Insurers to the JM Insureds:

<i>Policy Numbers</i>	<i>Underlying Insurance(*)</i>	<i>Policy Periods</i>	<i>Insurer</i>
RDX 938 4598	Lower	3/18/66-7/01/69	Continental
RDX 939 4222	Lower	3/18/66-7/01/69	Continental
RDX 808 7405	Lower	7/01/69-7/01/72	Continental
RDX 808 7449	Lower	7/01/69-7/01/72	Continental
RDX 893 6487	Higher	7/01/72-7/01/75	Continental
RDX 893 6490	Higher	7/01/72-7/01/75	Continental
RDX 186 4295	Lower	7/01/76-7/01/77	Columbia

(*)For illustrative purposes Only

“Policy Claims” means any and all claims, demands, allegations, duties, liabilities and obligations (whether or not presently known) which have been, or could have been, or might be, asserted by any Person against any or all members of the JM Group or against any or all members of the Settling Insurer Group based upon, arising out of or relating to the Policies, including, but not limited to, personal injury claims, property damage claims, and workers compensation claims.

"Settlement Amount" means Thirty Eight Million Five Hundred Thousand Dollars (\$38,500,000).

"Settlement Fund" means the Settlement Amount, together with any amounts paid by the Settling Insurers pursuant to Paragraph 5(b) or 5(c) or the Settlement Agreement, upon deposit of such amounts with (or in accordance with the written instructions of) the Clerk of this Court in accordance with the provisions of Paragraph 2 of the Settlement Agreement, and all investment income thereon and gains or losses attributable thereto after any such deposit.

"Settling Insurer Group" means the Settling Insurers and each of their present and former Affiliates and present, former and future directors, officers and employees.

Where the context so requires, each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

2. Orders.

(A) The disposition of the Settlement Fund is subject to the jurisdiction and further order of this Court;

(B) unless and until the Settlement Agreement terminates, any and all claims, charges or encumbrances which might otherwise have been assessable or assertable by any Person against or with respect to the JM Group's rights and interests based upon, arising out of or related to the Policies, and any and all claims or causes of action in law, equity, admiralty or otherwise based upon, arising out of, or related to the Policies or which were or are assessable or assertable by any Person against any or all of the Policies or any or all members of the Settling Insurer Group are transferred, and shall attach, solely to the Settlement Fund;

(C) unless and until the Settlement Agreement terminates, upon payment of the Settlement Amount to (or in accordance with the written instructions of) the Clerk of this Court in accordance with Paragraph 2(b) of the Settlement Agreement, the Settling Insurers and the Settling Insurer Group shall have no duties or obligations based upon, arising out of or related to the Policies and shall thereafter be released from any and all Policy Claims by any Person, and the Policies shall thereafter be deemed exhausted and shall thereupon be null and void and of no further force or effect;

(D) unless and until the Settlement Agreement terminates, all Persons are restrained and enjoined from commencing and/or continuing any suit, arbitration or other proceeding of any type or nature with respect to Policy Claims against any or all members of the Settling Insurer Group (it being understood that cross-claims which

are unrelated to Policy Claims and which are asserted by any party to JCP No. 1072 against the Settling Insurers are excluded from this clause (D)); and

(E) upon delivery of the Settlement Amount to (or in accordance with the written instructions of) the Clerk of this Court in accordance with the terms and provisions of the Settlement Agreement, the JM Plaintiffs are authorized to dismiss, unconditionally and with prejudice (unless the Settlement Agreement shall otherwise be terminated in accordance with its terms), both of the following: (i) the claims of the JM Plaintiffs against the Settling Insurers asserted or assertable in the JM Included Action, and (ii) the JM Included Action itself.

Dated: January 14, 1987

New York, New York

ENTER,

/s/Burton R. Lifland

United States Bankruptcy Judge



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IN RE JOHNS-MANVILLE CORP. ET AL.

MEMORANDUM & ORDER

86 Civ. 6124 (WK)

87 Civ. 0139 (WK)

87 Civ. 0699 (WK)

87 Civ. 0700 (WK)

87 Civ. 0701 (WK)

87 Civ. 0847 (WK)

87 Civ. 1283 (WK)

-----X
WHITMAN KNAPP, D.J.

On August 26, 1982 Johns-Manville corporation and affiliated entities ("Manville") filed petitions for reorganization pursuant to chapter 11 of the Bankruptcy Code. At that time Manville faced massive toxic tort liability, arising principally from asbestos related health and property claims, as well as the certainty of many, many more such claims in the future. In the ensuing nearly five years, the parties and Bankruptcy Judge Lifland have worked with skill and ingenuity to fashion a suitable plan of reorganization. Such a plan must provide for the compensation of today's asbestos victims without exhausting the resources necessary to care for tomorrow's victims. It must simultaneously account to the different types of potential tort plaintiffs, to creditors of Manville and to its shareholders. And it must do so within the framework of Chapter 11, since no other vehicle exists to deal with what is said to be the largest and most complex bankruptcy reorganization in history. *Cf. In Re Johns-Manville Corp.*, (2d Cir. 1986) (Oakes J., dissenting) 801 F.2d 60, 69-70; *In Re Johns-Manville Corp.* (2d Cir. July 13, 1987) Nos. 86-506868, 86-5070.

On December 18, 1986 Judge Lifland entered an order approving the Second Amended and Restated Plan of Reorganization of Manville (the "Plan"). Although the Plan was largely consensual, certain groups have appealed from that Order, and from other virtually contemporaneous orders which were necessary prerequisites of the plan. Those appeals have been consolidated before us. Briefs were filed, and on June 19, 1987 we heard oral argument on the following issues:

1) The Individual shareholder Appellants ("Wright Group") appeal from the Order of Substantive consolidation which brought together all the Manville entities for purposes of this reorganization, and also argue that the "cram-down" of the Plan under 11 U.S.C. §1129(a) was improper because the Plan was not "fair and equitable" to the holders of Manville common stock.

2) The MacArthur company appeals from the Order approving Manville's settlements with its insurance companies, claiming that MacArthur's rights as a co-insured have thereby been unjustly impaired.

3) The Kane Group, an alliance of asbestos health claimants who seek to bar future health claimants from participating in the plan, argue that issuance of the injunction which prohibits present claimants from suing Manville and permits them only to sue a Trust Fund created under the Plan, was beyond the power of the Bankruptcy Court and that the Bankruptcy Court had no power over future claimants who do not have "claims" within the meaning of the Bankruptcy Code.

4) The Armstrong Appellants (including other companies with potential asbestos-related liability) argued that the Plan should more readily permit the Trustees of the Plan to Join the "Wellington Facility," an industry-wide claims handling organization.

5) The Securities and Exchange commission ("S.E.C.") argues that it was reversible error for Judge Lifland to have declined to appoint an "official" committee to represent the interests of the common shareholders.

We have carefully reviewed the various opinions written by Judge Lifland with respect to all of these contentions. With one exception about to be noted, we see no occasion for further writing on these subjects and affirm for substantially the reasons set forth in his various opinions.

The contention that Judge Lifland committed reversible error in declining to appoint an official committee is presented by the appeal of the Wright Group, supported by the S.E.C. By our Memorandum and Order of July 8, 1987, we directed further oral argument on a question relevant to that appeal. Decision as to that question is hereby reserved.

All other decisions by Judge Lifland are hereby affirmed.

SO ORDERED.

DATED: July 15, 1987
New York, NY

/s/ Whitman Knapp
WHITMAN KNAPP, U.S.D.J.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 402, 403-August Term 1987

Argued: October 30, 1987

Decided: January 19, 1988

Docket Nos. 87-5030, 87-5038

MACARTHUR COMPANY and
WESTERN MACARTHUR COMPANY,
Appellants,

—v.—

JOHNS-MANVILLE CORPORATION, MANVILLE CORPORATION, MANVILLE INTERNATIONAL CORPORATION, MANVILLE EXPORT CORPORATION, JOHNS-MANVILLE INTERNATIONAL CORPORATION, MANVILLE SALES CORPORATION, f/k/a JOHNS-MANVILLE SALES CORPORATION, successor by merger to MANVILLE BUILDINGS MATERIALS CORPORATION, MANVILLE PRODUCTS CORPORATION, and MANVILLE SERVICE CORPORATION, MANVILLE INTERNATIONAL CANADA, INC., MANVILLE CANADA, INC., MANVILLE INVESTMENT CORPORATION, MANVILLE PROPERTIES CORPORATION, ALLAN-DEANE CORPORATION, KEN-CARYL RANCH CORPORATION, JOHNS-MANVILLE IDAHO, MANVILLE CANADA SERVICE INC., and SUNBELT CONTRACTORS, INC.,

Appellees.

IN RE:

JOHNS-MANVILLE CORPORATION, ET AL.,

Debtors.

Before:

NEWMAN, WINTER and MINER,

Circuit Judges.

Appeal from an order of the District Court for the Southern District of New York (Whitman Knapp, Judge) affirming orders of the Bankruptcy Court (Burton R. Lifland, Chief Judge) in a Chapter 11 proceeding. The orders approve settlements between the Johns-Manville Corporation and its product liability insurers and enjoin suits against the insurers, thereby limiting claimants, including sellers covered by vendor endorsements, to the proceeds of the settlements.

Affirmed.

JOHN H. FARICY JR., Minneapolis, Minn.
(Pustorino, Pederson, Tilton, & Parrington,
Minneapolis, Minn.; James J. Higgins,
Boyar, Higgins & Hayden, New York,
N.Y., on the brief), *for appellants.*

LOWELL GORDON HARRISS, New York,
N.Y. (Laureen F. Bedell, Gregor Baer,
Davis Polk & Wardwell, New York, N.Y.;
Herbert Stephen Edelman, Andrew A.
Kress, Levin & Weintraub & Crammes, New
York, N.Y., on the brief), *for appellees.*

JON O. NEWMAN, *Circuit Judge:*

MacArthur Company and Western MacArthur Company (collectively "MacArthur") appeal from an order of the District Court for the Southern District of New York (Whitman Knapp, Judge) affirming orders of the Bankruptcy Court (Burton R. Lifland, Chief Judge) entered in connection with the Chapter 11 proceeding of the JohnsManville Corporation ("Manville"). The orders of the Bankruptcy Court approved settlements between Manville and various of its insurance carriers and enjoined all suits against the insurers related to the settled policies. MacArthur, a distributor of

Manville's asbestos, claims to be a coinsured under the settled policies by virtue of "vendor endorsements" contained in the policies. It argues that the Bankruptcy Court was without jurisdiction or authority to issue the injunctive orders, which prevent it from suing the insurers. We conclude that the Bankruptcy Court had jurisdiction over the insurance policies as property of the debtor's estate. Moreover, the court had authority to issue the injunctive orders pursuant to its power to dispose of a debtor's property free and clear of third-party interests and to channel such interests to the proceeds of the disposition. The order of the District Court is affirmed.

Background

On August 26, 1982, Johns-Manville Corporation filed a petition for reorganization under Chapter 11 of the United States Bankruptcy Code. The filing was largely in response to Manville's potential liability to persons with latent asbestos-related disease caused by Manville's asbestos products. As has been explained during earlier proceedings in the Manville reorganization, Manville faced the possibility of suits by tens of thousands of as yet unknown asbestos victims, amounting to a potential liability of more than two billion dollars. See *Johns-Manville v. Asbestos Litigation Group (In re Johns-Manville)*, 26 B.R. 420 (Bankr. S.D.N.Y. 1983), *aff'd*, 40 B.R. 219 (S.D.N.Y. 1984); *GAF Corp. v. Johns-Manville Corp. (In re Johns-Manville)*, 26 B.R. 405 (Bankr. S.D.N.Y. 1983), *aff'd*, 40 B.R. 219 (S.D.N.Y. 1984).

At the time of its Chapter 11 filing, Manville was engaged in extensive litigation with its insurance carriers concerning its coverage for asbestos-related liabilities. In order to avoid the uncertainty of the insurance litigation and to provide funding for its plan of reorganization, Manville endeavored to settle its insurance claims. Between 1984 and 1986, the insurers agreed to settle with Manville for approximately \$770 million. The settlements provided that, in exchange for cash payments, the insurers would be relieved of all obligations related to the disputed policies and the insurers would be protected from claims based on such obligations by injunctive orders of the Bankruptcy Court. The insurers are entitled to terminate the settlements if the injunctive orders are not issued or if they are set aside on appeal. Since the insurance settlements are a cornerstone of Manville's proposed plan of reorganization, see

Johns-Manville Corp. v. Asbestos Litigation Group (In re Johns-Manville), 33 B.R. 254, 267 (Bankr. S.D.N.Y. 1983), the Bankruptcy Court's orders are a critical part of the entire reorganization.

MacArthur is a distributor of Manville's asbestos products. It claims to be a coinsured under some of Manville's insurance policies pursuant to "vendor endorsements" contained in the policies. The vendor endorsements entitle distributors to insurance coverage for liability resulting from their sale of Manville's products. The endorsements are subject to the payment limits and other restrictions of the underlying policies; thus, if the product liability aggregate limits in the underlying Manville policies have been exhausted, the insurer has no independent obligation to pay distributors on product liability claims. It is disputed whether Manville's policy limits have been exhausted.

MacArthur objected to the Bankruptcy Court's approval of the insurance settlements on the grounds that the proposed injunctions would impair its rights under the vendor endorsements. MacArthur argued that it had recently been sued because of its sale of Manville's asbestos, that it was entitled to coverage from the settling insurers, and that its contractual rights could not lawfully be extinguished by the Bankruptcy Court's injunctive orders. MacArthur suggested that the Bankruptcy Court's orders would be permissible only if the Court extended the protection of the injunction to MacArthur, that is, if asbestos-related suits were barred against MacArthur as well as against the settling insurers. The Bankruptcy Judge dismissed MacArthur's objections from the bench, reasoning that its "interest in the policies is highly speculative" and that any claim it had, based on Manville's insurance, could be asserted in the Bankruptcy Court. By orders dated December 18, 1986, and January 14, 1987, the Bankruptcy Court approved the insurance settlements and enjoined all suits against the insurers "based upon, arising out of, or related to the [settled] policies." The Bankruptcy Court's orders further provided that the settlement fund was subject to the continuing jurisdiction of the Bankruptcy Court and that law suits subject to the injunction "are transferred, and shall attach, solely to the Settlement Fund." On July 15, 1987, the District Court affirmed the orders of the Bankruptcy Court. This appeal followed.

¹Neither MacArthur nor any other party has challenged the fairness of the \$770 million settlement amount.

MacArthur's primary contention on appeal is that the Bankruptcy Court lacked jurisdiction and authority to enjoin suits against Manville's insurers. MacArthur argues that the injunctive orders constitute a *de facto* discharge in bankruptcy of non-debtor parties not entitled to the protection of Chapter 11. MacArthur insists that its interests in the vendor endorsements is a contractual right solely between it and the non-debtor insurance companies and is therefore beyond the reach of the Bankruptcy Court. The flaw in MacArthur's reasoning is that the injunctive orders do not offer the umbrella protection of a discharge in bankruptcy. Rather, they preclude only those suits against the settling insurers that arise out of or relate to Manville's insurance policies. Moreover, claims against the insurers based on Manville's policies are not extinguished; they are simply channeled away from the insurers and redirected at the proceeds of the settlement. The Bankruptcy Court properly issued the orders pursuant to its equitable and statutory powers to dispose of the debtor's property free and clear of thirdparty interests and to channel those interests to the proceeds thereby created.

It is well established that a bankruptcy court has jurisdiction over all of the property of the debtor's estate, wherever located. *See Straton v. New*, 283 U.S. 318, 320-21 (1931) (purpose of bankruptcy law is "to place the property of the bankrupt, wherever found, under the control of the court, for equal distribution among the creditors"); *Loewi Realty Corp. v. Chanticleer Assoc., Ltd. (In re Chanticleer Assoc., Ltd.)*, 592 F.2d 70, 73-74 (2d Cir. 1979) (bankruptcy court's "power to preserve its jurisdiction by enjoining proceedings that would remove property from the bankrupt estate is fundamental"); 28 U.S.C.A. §§ 1334(d) (West Supp. 1987) (district court sitting in bankruptcy has jurisdiction over "all of the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate"); 28 U.S.C. § 157(b)(2) (Supp. III 1985) ("core proceedings" in which bankruptcy judges may issue final orders include proceedings related to the property of the estate as "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1) (1982). This provision has been construed expansively: "the scope of this paragraph [section 541(a)(1)] is broad. It includes all kinds of property, including tangible or intangible property, causes of action and all other forms of property currently specified in Section 70a of the Bankruptcy Act." *United*

States v. Whiting Pools, Inc., 462 U.S. 198, 205 n.9 (1983) (quoting S.Rep.No. 989, 95th Cong., 2d Sess. 82 (1978), reprinted in 1978 U.S. Code Cong. & Admin. News 5787, 5868). In *Whiting Pools*, Supreme Court held that the property of the estate includes assets seized by a creditor prior to the filing of the bankruptcy petition. The Court explained that [b]oth the congressional goal of encouraging reorganizations and Congress' choice of methods to protect secured creditors suggest that Congress intended a broad range of property to be included in the estate." 462 U.S. at 204; accord *Johns-Manville Corp. v. Asbestos Litigation Group (In re Johns-Manville)*, supra 40 B.R. at 230.

Numerous courts have determined that a debtor's insurance policies are property of the estate, subject to the bankruptcy court's jurisdiction. During earlier proceedings in the present case, the Bankruptcy Court held that the automatic stay provision of the Code, 11 U.S.C. § 362(a) (1982 & Supp. IV 1986), which prevents suits against the debtor or his property after a petition is filed, authorized an injunction that barred claims by asbestos victims against Manville's insurers in jurisdictions allowing direct actions against the insurers. *Johns-Manville Corp. v. Asbestos Litigation Group (In re Johns-Manville)*, supra, 26 B.R. at 435-36 (on rehearing), aff'd, 40 B.R. at 230-31. The Court found that Manville's insurance policies and their proceeds were "substantial property of the Manville estate which will be diminished if and to the extent that third party direct actions against the insurance carriers result in plaintiffs' judgments." 26 B.R. at 435. The Fifth Circuit has followed this analysis, enjoining suits against Manville's insurers in Louisiana, a state that permits direct actions. See *In re Davis*, 730 F.2d 176, 184 & n.25 (5th Cir. 1984). Other courts are in agreement. E.g. *A.H. Robins Co. v. Piccinin (In re A.H. Robbins Co.)*, 788 F.2d 994, 1001-02 (4th Cir.), cert. denied, 107 S. Ct. 251 (1986); *Pearl-Wick Corp. v. John Hancock Mutual Life Insurance Co. (In re Pearl-Wick Corp.)*, 15 B.R. 143, 148 (Bankr. S.D.N.Y. 1981), aff'd, 26 B.R. 604 (S.D.N.Y.), aff'd, 697 F.2d 295 (2d Cir. 1982); *In re Moskowitz*, 13 B.R. 357, 360 (Bankr. S.D.N.Y. 1981); *Brenham v. Deerfield Organization, Inc. (In re Norman Industries)*, 1 B.R. 162, 166 (Bankr. W.D. La. 1979).

MacArthur insists that while Manville's interests in the settled insurance policies may be subject to the jurisdiction of the Bankruptcy Court, those interests are separate and distinct from MacArthur's own contractual rights, which the Bankruptcy Court may not impair. MacArthur contends that because its own rights are

separate from Manville's, its claims under the vendor endorsements are too remote from the Chapter 11 proceeding to permit the Bankruptcy Court to exercise jurisdiction. See *Northern Pipeline Construction Co. v. Marathon Pipeline Co.*, 458 U.S. 50, 83-87 (1982); 1 King, *Collier on Bankruptcy* ¶ 3.01 at 3-29 (15th ed. 1987). MacArthur's position is unsupported in the record. The vendor endorsements cover only those liabilities resulting from the vendor's status as a distributor of Manville's products. The endorsements are limited by the product liability limits of the underlying Manville policies and are otherwise subject to all of the terms of the underlying policies. MacArthur's rights as an insured vendor are completely derivative of Manville's rights as the primary insured. Such derivative rights are no different in this respect from those of the asbestos victims who have already been barred from asserting direct actions against the insurers. See *in re Davis*, *supra*. MacArthur asserts contractual obligations whereas the direct action plaintiffs' claims sounded in tort; nevertheless in both instances, third parties seek to collect out of the proceeds of Manville's insurance policies on the basis of Manville's conduct. In both cases, plaintiffs' claims are inseparable from Manville's own insurance coverage and are consequently well within the Bankruptcy Court's jurisdiction over Manville's assets. See *in re Davis*, 730 F.2d at 183 (rejecting claim that direct actions against insurers have no reasonable nexus with bankruptcy proceedings).

Having properly exercised jurisdiction over the insurance policies, the Bankruptcy Court had the authority to approve the settlements and to channel claims arising under the policies to the proceeds of the settlement. In *Van Huffel v. Harkelrode*, 284 U.S. 225 (1931), the Supreme Court explained that even absent express statutory authority, the Bankruptcy Court had the inherent equitable power to sell a debtor's property and to transfer third-party interests to the proceeds of the sale. 284 U.S. at 227-28. See also *Ray v. Norseworthy*, 90 U.S. (23 Wall.) 128, 134-35 (1874) (court may sell bankrupt's property encumbered by third-party claims as long as third parties retain their respective priorities in the proceeds of the sale); *Fierman v. Seward Nation Bank*, 37 F.2d 11, 13 (2d Cir. 1930) ("When the bankrupt's property was sold free of liens, the liens upon the property became rights against the substituted proceeds of sale, and claimants to this fund were obliged to assert their rights by applying to the court in whose custody it was."); *In re Penn Central Transportation Co.*, 383 F.Supp. 1128, 1130 (E.D. Pa. 1974) (power of a reorganization court to transfer interests in debtor's property to the proceeds

of a sale is well established). The Bankruptcy Code provides statutory authority for the channeling orders. 11 U.S.C. § 363(f) (1982 & Supp. IV 1986) permits, under certain circumstances, sales of property in the debtor's estate "free and clear of any interest in such property of an entity other than the estate." One of the circumstances permitting such sales is that the third-party interest be in *bona fide* dispute. 11 U.S.C. § 363(f)(4). In the present case, such a dispute exists because Manville claims that the product liability limits on the policies to which the vendor endorsements attach have been exhausted. The Bankruptcy Judge appears to have substantially accepted Manville's contention, as he found that MacArthur's interest in the settled policies was "highly speculative."

The injunctive orders issued by the Bankruptcy Court were necessary to effectuate the Court's channeling authority, that is, to make sure that claims to Manville's insurance proceeds were, in fact, channeled to the settlement fund and could not be asserted directly against the insurers. The authority to issue the injunction is thus a corollary to the power to dispose of assets free and clear and to channel claims to the proceeds.

The Bankruptcy Court, having jurisdiction over the property of the Bankrupt, and having jurisdiction to order the sale of the Bankrupt's property and to determine the nature, extent and validity of liens asserted against the proceeds, had jurisdiction to enjoin a lien-holder from attempting to assert his lien against property in the hands of a purchaser who has acquired from the Bankruptcy Court a title free and clear of liens and encumbrances.

Whitehead & Kales Co. v. Dempster (In re Wiltse Bros. Corp.), 361 F.2d 295, 299 (6th Cir. 1966) (citing *Van Huffel v. Harkelrode, supra*). Additional authority for the injunction is to be found in section 105(a) of the Bankruptcy Code, which permits the Bankruptcy Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a) (Supp. IV 1986). This provision has been construed liberally to enjoin suits that might impede the reorganization process. See *Manville Corp. v. Equity Security Holders Committee (In re Johns-Manville Corp.)*, 801 F.2d 60, 64 (2d Cir. 1986); *In re Davis, supra*, 730 F.2d at 183-84. In this case, the Bankruptcy Court found as a fact that to permit actions against Manville's insurers arising from Manville's policies would adversely affect pro-

perty of the estate and would interfere with reorganization. *Johns-Manville Corp. v. Asbestos Litigation Group*, *supra*, 26 B.R. at 435-36.

Admittedly, the insurance settlement and accompanying injunction in this case are not precisely the same as the traditional sale of real property free and clear of liens followed by a channeling of the liens to the proceeds of the sale. *E.g. Van Huffel v. Harkelrode*, *supra*. Here, the property of the estate at issue (insurance policies) was not technically "sold"; rather, Manville liquidated its interest via a voluntary settlement. Moreover, the claims on the property-MacArthur's interest under the vendor endorsements, or in the earlier stages of this litigation, health claimants' direct actions-are different from the liens on real property that are traditionally the subject of the bankruptcy court's equitable channeling power. *But cf. Forde v. Kee-Lox Manufacturing Co.*, 437 F. Supp. 631, 634-35 (W.D.N.Y. 1977) (trustee permitted to sell debtor's estate free and clear of a civil rights claim), *aff'd on other grounds*, 584 F.2d 4 (2d Cir. 1978); *Rubenstein v. Alaska Pacific Consortium (In re New England Fish Co.)*, 19 B.R. 323, 329 (Bankr. W.D. Wash. 1982) (same). Nevertheless, the underlying principle of preserving the debtor's estate for the creditors and funneling claims to one proceeding in the bankruptcy court remains the same. The principle is a fundamental part of the bankruptcy law. Particularly since the insurance settlement/injunction arrangement was essential in this case to a workable reorganization, it falls well within the bankruptcy court's equitable powers "which traditionally 'have been invoked to the end that substance will not give way to form, that technical considerations will not prevent substantial justice from being done.'" *In re UNR Industries, Inc.*, 725 F.2d 1111, 1119 (7th Cir. 1984) (quoting *Pepper v. Litton*, 308 U.S. 295, 305 (1939)).

MacArthur contends that the Bankruptcy Court's orders are unfair. MacArthur asserts that it has been forced to accept the burden of asbestos victims' suits without the protection of the insurance coverage to which it is entitled. Even if we assume that MacArthur could show that it has a valid claim against the insurers, MacArthur is not left without a remedy: It may proceed in the Bankruptcy Court against the \$770 million settlement fund. It has long been recognized that when a debtor's assets are disposed of free and clear of third-party interests, the third party is adequately protected if his interest is assertable against the proceeds of the disposition. *See Ray v. Norseworthy*, *supra*, 90 U.S. at 134-35; S. Rep. No. 989, 95th Cong., 2d Sess. 56 (1978), *reprinted in* 1978

U.S. Code Cong. & Admin. News 5787, 5842 (committee report on 11 U.S.C. § 363(f)) ("Most often, adequate protection in connection with a sale free and clear of other interests will be to have those interests attach to the proceeds of the sale."). In the present case, the injunctive orders of the Bankruptcy Court make clear that claims arising from the settled insurance policies attach to the settlement fund. It may well be that MacArthur would prefer to assert its interest in Manville's property in a proceeding other than that in the Bankruptcy Court, but such a result is not required by the bankruptcy law.

We have considered MacArthur's contention that it was denied due process of law because it received notice of the insurance settlements only after the settlements had been negotiated. This contention is without merit because MacArthur and all other interested parties were provided with notice and a hearing before the settlements were approved by the Bankruptcy Court. The notice of proposed settlements issued by the Bankruptcy Court met the requirements of due process. See *Handschu v. Special Services Division*, 787 F.2d 828, 832-33 (2d Cir. 1986).

The decision of the District Court affirming the orders of the Bankruptcy Court is affirmed.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 21st day of March one thousand nine hundred and eighty-eight.

IN RE:

JOHNS-MANVILLE CORP., ET AL.
Debtor.

MACARTHUR AND COMPANY and WESTERN MACARTHUR COMPANY and LAWRENCE KANE, a Class-4 creditor and asbestos-health claimant, on his own behalf and on behalf of individual Class-4 creditors and asbestos-health claimants,

Appellants,

v.

JOHNS-MANVILLE CORPORATION, MANVILLE INTERNATIONAL CORP., MANVILLE EXPORT CORP., JOHNS-MANVILLE INTERNATIONAL CORP., MANVILLE SALES CORP., f/k/a JOHNS-MANVILLE SALES CORP., successor by merger to MANVILLE BUILDINGS MATERIALS CORP., MANVILLE PRODUCTS CORP., and MANVILLE SERVICE CORP., MANVILLE INTERNATIONAL CANADA, INC., FILLE CANADA, INC., MANVILLE INVESTMENT CORP., MANVILLE PROPERTIES CORP., ALLAN-DEANE CORP., KEN-CARYL RANCH CORP., JOHNS-MANVILLE, IDAHO, MANVILLE CANADA SERVICE INC., and SUNBELT CONTRACTORS, INC.,

Appellee.

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by counsel for the appellants, MacArthur Company and Western MacArthur Company.

Upon consideration by the panel that heard the appeal, it is

Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

/s/Elaine B. Goldsmith

Elaine B. Goldsmith,
Clerk

§ 105. Power of court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

§ 363. Use, sale, or lease of property

(a) In this section, “cash collateral” means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.

(2) If notification is required under subsection (a) of section 7A of the Clayton Act (15 U.S.C. 18a) in the case of a transaction under this subsection, then--

(A) notwithstanding subsection (a) of such section, such notification shall be given by the trustee; and

(B) notwithstanding subsection (b) of such section, the required waiting period shall end on the tenth day after the date of the receipt of such notification, unless the court, after notice and hearing, orders otherwise.

(c)(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1304, 1203, or 1204 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless--

(A) each entity that has an interest in such cash collateral contents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

(3) Any hearing under paragraph (2)(B) of this subsection may be a preliminary hearing or may be consolidated with a hearing under subsection (e) of this section, but shall be scheduled in accordance with the needs of the debtor. If the hearing under paragraph (2)(B) of this subsection is a preliminary hearing, the court may authorize such use, sale, or lease only if there is a reasonable likelihood that the trustee will prevail at the final hearing under subsection (e) of this section. The court shall act promptly on any request for authorization under paragraph (2)(B) of this subsection.

(4) Except as provided in paragraph (2) of this subsection, the trustee shall segregate and account for any cash collateral in the trustee's possession, custody, or control.

(d) The trustee may use, sell, or lease property under subsection (b) or (c) of this section only to the extent not inconsistent with any relief granted under section 362(c), 362(d), 362(e), or 362(f) of this title.

(e) Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if--

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

(g) Notwithstanding subsection (f) of this section, the trustee may sell property under subsection (b) or (c) of this section free and clear of any vested or contingent right in the nature of dower or curtesy.

(h) Notwithstanding subsection (f) of this section, the trustee may sell both the estate's interest, under subsection (b) or (c) of this section, and the interest of any co-owner in property in which the debtor had, at the time of the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety, only if--

(1) partition in kind of such property among the estate and such co-owners is impracticable;

(2) sale of the estate's undivided interest in such property would realize significantly less for the estate than sale of such property free of the interests of such co-owners;

(3) the benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and

(4) such property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

(i) Before the consummation of a sale of property to which subsection (g) or (h) of this section applies, or of property of the estate that was community property of the debtor and the debtor's spouse immediately before the commencement of the case, the debtor's spouse, or a co-owner of such property, as the case may be, may purchase such property at the price at which such sale is to be consummated.

(j) After a sale of property to which subsection (g) or (h) of this section applies, the trustee shall distribute to the debtor's spouse or the co-owners of such property, as the case may be, and to the estate, the proceeds of such sale, less the costs and expenses, not including any compensation of the trustee, of such

sale, according to the interests of such spouse or co-owners, and of the estate.

(k) At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.

(l) Subject to the provisions of section 365, the trustee may use, sell, or lease property under subsection (b) or (c) of this section, or a plan under chapter 11, (12), or (13) of this title may provide for the use, sale, or lease of property, notwithstanding any provision in a contract, a lease, or applicable law that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title concerning the debtor, or on the appointment of or the taking possession by a trustee in a case under this title or a custodian, and that effects, or gives an option to effect, a forfeiture, modification, or termination of the debtor's interest in such property.

(m) The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

(n) The trustee may avoid a sale under this section if the sale price was controlled by an agreement among potential bidders at such sale, or may recover from a party to such agreement any amount by which the value of the property sold exceeds the price at which such sale was consummated, and may recover any costs, attorneys' fees, or expenses incurred in avoiding such sale or recovering such amount. In addition to any recovery under the preceding sentence, the court may grant judgment for punitive damages in favor of the estate and against any party that entered into such an agreement in willful disregard of this subsection.

(o) In any hearing under this section--

(1) the trustee has the burden of proof on the issue of adequate protection; and

(2) the entity asserting an interest in property has the burden of proof on the issue of the validity, priority, or extent of such interest.

§ 524. Effect of discharge

(a) A discharge in a case under this title--

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge section 523, 1128(a)(1), or 1328(c)(1) of this title, or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

(b) Subsection (a)(3) of this section does not apply if--

(1)(A) the debtors spouse is a debtor in a case under this title, or a bankrupt or a debtor in a case under the Bankruptcy Act, commenced within six years of the date of the filing of the petition in the case concerning the debtor; and

(B) the court does not grant the debtor's spouse a discharge in such case concerning the debtor's spouse; or

(2)(A) the court would not grant the debtor's spouse a discharge in a case under chapter 7 of this title concerning such spouse commenced on the date of the filing of the petition in the case concerning the debtor; and

(B) a determination that the court would not so grant such discharge is made by the bankruptcy court within the time and in the manner provided for a determination under section 727 of this title of whether a debtor is granted a discharge.

(c) An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if--

(1) such agreement was made before the granting of the discharge under section 727, 1141, 1228, or 1328 or this title;

(2) such agreement contains a clear and conspicuous statement which advises the debtor that the agreement may be rescinded at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;

(3) such agreement has been filed with the court and, if applicable, accompanied by a declaration or an affidavit of the attorney that represented the debtor during the course of negotiating an agreement under this subsection, which states that such agreement--

(A) represents a fully informed and voluntary agreement by the debtor; and

(B) does not impose an undue hardship on the debtor or a dependent of the debtor;

(4) the debtor has not rescinded such agreement at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;

(5) the provisions of subsection (d) of this section have been complied with; and

(6)(A) in a case concerning an individual who was not represented by an attorney during the course of negotiating an agreement under this subsection, the court approves such agreement as--

(i) not imposing an undue hardship on the debtor or a dependent of the debtor; and

(ii) in the best interest of the debtor.

(B) Subparagraph (A) shall not apply to the extent that such debt is a consumer debt secured by real property.

(d) In a case concerning an individual, when the court has determined whether to grant or not to grant a discharge under section 727, 1141, 1128, or 1328 of this title, the court may hold a hearing at which the debtor shall appear in person. At any such hearing, the court shall inform the debtor that a discharge has been granted or the reason why a discharge has not been granted. If a discharge has been granted and if the debtor

desires to make an agreement of the kind specified in subsection (c) of this section, then the court shall hold a hearing at which the debtor shall appear in person and at such hearing the court shall--

(1) inform the debtor--

(A) that such an agreement is not required under this title, under nonbankruptcy law, or under any agreement not made in accordance with the provisions of subsection (c) of this section; and

(B) of the legal effect and consequences of--

(i) an agreement of the kind specified in subsection (c) of this section; and

(ii) a default under such an agreement;

(2) determine whether the agreement that the debtor desires to make complies with the requirements of subsection (c)(6) of this section, if the consideration for such agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor.

(e) Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.

(f) Nothing contained in subsection (c) or (d) of this section prevents a debtor from voluntarily repaying any debt.

§ 541. Property of the estate

(a) The commencement of a case under section 301, 302, or 303 or this title creates an estate. Such estate is comprised of all the following property wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor property as of the commencement of the case.

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is--

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable

claim against the debtor's spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date--

(A) by bequest, devise, or inheritance;

(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or

(C) as a beneficiary of a life insurance policy or of a death benefit plan.

(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

(7) Any interest in property that the estate acquires after the commencement of the case.

(b) Property of the estate does not include--

(1) any power that the debtor may exercise solely for the benefit of an entity other than the debtor; or

(2) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease before the commencement of the case under this title, and ceases to include any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case.

(c)(1) Except as provided in paragraph (2) of this subsection, an interest of the debtor in property becomes property of the estate under subsection (a)(1), (a)(2), or (a)(5) of this section notwithstanding any provision in an agreement, transfer instrument, or applicable nonbankruptcy law--

(A) that restricts or conditions transfer of such interest by the debtor; or

(B) that is conditioned on the insolvency or financial condi-

tion of the debtor, on the commencement of a case under this title, or on the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement, and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor's interest in property.

(2) A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable non-bankruptcy law is enforceable in a case under this title.

(d) Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, or an interest in such a mortgage, sold by the debtor but as to which the debtor retains legal title to service or supervise the servicing of such mortgage or interest, becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

(3)
No. 87-2082

Supreme Court, U.S.

FILED

JUL 20 1988

JOSEPH E. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

MACARTHUR COMPANY and WESTERN
MACARTHUR COMPANY,

Petitioners,

v.

JOHNS-MANVILLE CORPORATION,
MANVILLE CORPORATION, *et al.*,

Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the Bankruptcy Court, with jurisdiction over an item of property in which the debtor has title, possession, and an unquestioned interest, have the authority to dispose of the whole of that property and to require that any claimed interest of any non-debtor in a portion of that property be asserted only against the proceeds of the disposition?

RULE 28.1 STATEMENT

Respondent Manville Corporation is a public corporation organized under Delaware law. The other respondents (or their predecessors) are (or were) direct or indirect wholly-owned subsidiaries of respondent Manville Corporation. Respondent Manville Corporation owns all of the capital stock of Manville Forest Products Corporation, a Delaware corporation, and various foreign corporations located in Europe, South America, and the Far East.

TABLE OF CONTENTS

	<u>PAGE</u>
QUESTION PRESENTED	i
RULE 28.1 STATEMENT	ii
TABLE OF AUTHORITIES	iv
BRIEF IN OPPOSITION TO PETITION FOR WRIT	1
COUNTERSTATEMENT OF THE CASE	2
REASONS FOR DENYING THE WRIT	6
CONCLUSION	12

TABLE OF AUTHORITIES

<i>Cases</i>	<u>PAGE</u>
<i>In re Abraham</i> , 421 F.2d 226 (5th Cir. 1970)	8
<i>A.H. Robins Co v. Piccinin</i> , 788 F.2d 994 (4th Cir. 1986)	8
<i>Burlingham v. Crouse</i> , 228 U.S. 459 (1913)	8
<i>Chauncey v. Dyke Bros.</i> , 119 F. 1 (8th Cir. 1902)	8
<i>In re Davis</i> , 730 F.2d 176 (5th Cir. 1984)	4,8
<i>Farmers Bank v. Julian</i> , 383 F.2d 314 (8th Cir.), <i>cert. denied</i> , 389 U.S. 1021 (1967)	8
<i>Fierman v. Seward National Bank</i> , 37 F.2d 11 (2d Cir. 1930)	8
<i>GAF Corp. v. Johns-Manville Corp.</i> , 26 B.R. 405 (Bankr. S.D.N.Y. 1983), <i>aff'd</i> , 40 B.R. 219 (S.D.N.Y. 1984)	4
<i>Gotkin v. Korn</i> , 182 F.2d 380 (D.C. Cir. 1950)	8
<i>In re Pearl-Wick Corp.</i> , 15 B.R. 143 (Bankr. S.D.N.Y. 1981), <i>aff'd</i> , 26 B.R. 604 (S.D.N.Y. 1982), <i>aff'd</i> , 697 F.2d 295 (2d Cir. 1982)	8
<i>Ray v. Norseworthy</i> , 90 U.S. (23 Wall.) 128 (1875) . .	8
<i>Rubenstein v. Nourse</i> , 70 F.2d 482 (8th Cir. 1934) . . .	8
<i>Shawhan v. Wherritt</i> , 48 U.S. (7 How.) 627 (1849) . . .	7
<i>Straton v. New</i> , 283 U.S. 318 (1931)	7
<i>United States v. Whiting Pools, Inc.</i> , 462 U.S. 198 (1983)	7

	<u>PAGE</u>
<i>Van Huffel v. Harkelrode</i> , 284 U.S. 225 (1931)	8
<i>Wedgeworth v. Fibreboard Corp.</i> , 706 F.2d 541 (5th Cir. 1983)	4
<i>Williams v. United States Fidelity & Guaranty Co.</i> , 236 U.S. 549 (1915)	7
<i>In re Wiltse Bros.</i> , 361 F.2d 295 (6th Cir. 1966)	8

No. 87-2082

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

MACARTHUR COMPANY and WESTERN
MACARTHUR COMPANY,

Petitioners,

v.

JOHNS-MANVILLE CORPORATION,
MANVILLE CORPORATION, *et al.*,

Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI

The respondents Manville Corporation and affiliated debtors ("respondent") oppose the petition of MacArthur Company and Western MacArthur Company ("petitioner") for a writ of certiorari. As set forth below, the requirements of the issuance of a writ of certiorari are not satisfied, and no cause whatsoever exists for further review of this matter.

COUNTERSTATEMENT OF THE CASE

Respondent will not enumerate all of the factual inaccuracies or unsupported statements contained in the petition.* These matters are irrelevant for purposes of upholding the authority of a bankruptcy court over the whole property in which a debtor has title, possession and an interest. The facts necessary for assessing the petition are set forth in the opinion of the court of appeals (*see* Appendix, D-3 — D-5) and the various other opinions growing out of this reorganization case referred to therein. In addition to the facts set forth in the opinion of the court of appeals, respondent will elucidate certain facts more fully.

One of respondent's principal assets at the time of the filing of the Chapter 11 case was its insurance policies. Respondent, like most major corporations, maintained substantial amounts of comprehensive general liability insurance. These policies were issued to respondent (or its predecessors) from the late 1920's through 1978. They provided respondent with indemnity for, *inter alia*, losses incurred by the named insured

* Petitioner's statements (Pet. at 6, 7) as to the testimony at the approval hearing, the nature of their objections, and the nature of the bankruptcy court's ruling are inaccurate. Petitioner's statements concerning the number and types of suits against it (Pet. at 5) are nowhere contained in the record. Nor is there any basis in the record or in any offer by petitioner for determining whether petitioner has been held liable for its own acts of negligence or, as petitioner tries to suggest, only for passive negligence as a mere distributor of products manufactured by respondent. The court of appeals noted the uncertainty as to whether petitioner had any claim. *See* Appendix D-4.

(respondent) for product liability claims asserted against it. While the policies were issued to respondent and the named insured was respondent (or its predecessors), under the definitions in these (and most) comprehensive general liability policies many other entities were potentially "co-insureds." Other "co-insureds" under these policies included officers and directors, affiliated corporations, and, at least under some policies, vendors of products manufactured by respondent.

Although there were many potential "co-insureds" under these comprehensive general liability policies, all insurance provided by the policies was subject to the same definitions, exclusions, and limits. There were no separate "pots" of insurance for different potential "co-insureds"; there were no discrete or separate limits, for example, for vendors. Rather, the insurance provided was an undivided, inseparable whole, and the first insured to incur indemnifiable losses could exhaust all of the available insurance. For example, if a primary policy had an annual aggregate product liability limit of \$500,000, and respondent incurred indemnifiable losses (*i.e.*, settled product liability claims or paid judgments) of \$500,000, the insurance provided by that policy would be exhausted, and no "co-insured" would have any claim under the policy. *See* Appendix D-7. Similarly, if any "co-insured" incurred indemnifiable losses that reduced or even exhausted the policy limits before claims were asserted against respondent, respondent would have a reduced claim or even no claim under the policies. All "rights" under the policies derive from the fact that respondent acquired the policies, but no "co-insured" has any right to any coverage that was severable or separate. *Ibid.*

The importance of these insurance assets to respondent's reorganization was obvious. After the Chapter 11 filing, however, various asbestos health claimants attempted to bring direct action suits against respondent's insurers, claiming a right to the insurance proceeds deriving from respondent's right under the policies to an indemnity for product liability losses. Although there had been a prior order of the bankruptcy court enjoining such attempts by third parties to assert rights to respondent's insurance policies outside the Chapter 11 case,* a decision by the United States Court of Appeals for the Fifth Circuit seemed to endorse such direct actions where permitted by state procedural law.** A district court, however, held that these very insurance policies were property of respondent's estate regardless of who might ultimately be entitled to proceeds, and enjoined, *inter alia*, attempts by any person to proceed directly against respondent's insurers. The Court of Appeals for the Fifth Circuit then altered its view, agreeing that these policies were property of respondent's estate and refusing to permit such direct action suits against the insurers based on these policies.*** Notwithstanding these rulings, however, the insurers insisted that any settlement terminate all obligations under these policies.

* See *GAF Corp. v. Johns-Manville Corp.*, 26 B.R. 405 (Bankr. S.D.N.Y. 1983), *aff'd*, 40 B.R. 219 (S.D.N.Y. 1984).

** See *Wedgeworth v. Fibreboard Corp.*, 706 F.2d 541 (5th Cir. 1983).

*** See *In re Davis*, 730 F.2d 176 (5th Cir. 1984).

The provisions of the settlement agreements to which petitioner objects are termed the "channeling" and "injunctive" provisions. The petition does not quote or discuss the actual language of such provisions or the actual order entered by the bankruptcy court. The provisions and impact of these orders are as follows. The \$770 million that respondent received from the insurers - the *res* - is subject to the jurisdiction of the bankruptcy court. *E.g.*, Appendix A-4 (Clause 1.2(A)). Under the order of the bankruptcy court, every person is enjoined from suing the settling insurers, but only on any claim based upon, arising out of, or related to *these* policies which have been settled. *E.g.*, Appendix A-5 (Clause 1.2(D)). Thus, any direct action claimant or asserted "co-insured" under these policies is enjoined from proceeding against the settling insurers for any claim under these policies. However, any asserted rights to or under the settled policies are channeled away from the policies themselves and to the proceeds of the settlement, which are under the control of the bankruptcy court. *E.g.*, Appendix A-4 (Clause 1.2(B)). Any person like petitioner who claims rights under these settled insurance policies may come into the bankruptcy court, establish as a matter of fact and as a matter of law its right, and be paid out of the *res*. Only then are the *net* proceeds of the settlements allocated under the plan of reorganization. The interrelated purpose and effect of the channeling and injunctive provisions of the order are to preclude suits against the settling insurers, which have, in effect, bought back their insurance policies, and to channel any claim based on those policies to the proceeds of the settlement.

The petition refers intermittently, and without citation, to respondent's plan of reorganization. The plan of reorganization was confirmed after the insurance settlements had been

approved. The order of confirmation was affirmed by the district court and by the court of appeals. The order of confirmation, independent of the orders approving the insurance settlement agreements, contains, *inter alia*, injunctions against suits against the settling insurers based on, arising under, and related to the settled insurance policies. Petitioner did not object to the plan or the order of confirmation and did not appeal therefrom.

REASONS FOR DENYING THE WRIT

The petition for certiorari should be denied. The decision of the Second Circuit does not conflict with any decision of this Court or any court of appeals. To the contrary, as shown below that decision faithfully follows and applies the decisions of this and other courts. All courts that have been faced with these issues agree on both the rationale and the result. Petitioner does not even contend that there is a conflict among the circuits, much less a conflict concerning a substantial, recurring issue of national significance. Rather, petitioner argues factual matters and tries to invoke principles that are simply not involved in this case. Moreover, the decision below was a correct application of federal bankruptcy law governing the authority of a bankruptcy court over property in a proceeding under Title 11. Petitioner cannot and does not refute the analysis or application of these established principles of federal law.

Petitioner does not even attempt to argue that the decision of the Second Circuit conflicts with any decision of this Court or any court of appeals. While the petition is couched in

terms that the bankruptcy court supposedly exceeded its “jurisdiction,” petitioner does not state what it means by “jurisdiction.” There is, however, no conflict that a bankruptcy court does have, by specific legislation, exclusive jurisdiction over property of the debtor.* As this Court wrote, that jurisdiction under Section 541(a) extends to the whole property if the debtor has an interest in that property.** There is no conflict that the “property” over which a bankruptcy court has jurisdiction was broadly defined by Congress.*** There

* Both Section 541 of Title 11, and Section 1334(d) of Title 28, specifically give the bankruptcy court *exclusive jurisdiction* over property of the debtor wherever located. This grant of jurisdiction reflects the purpose of bankruptcy law long articulated by this Court. The fundamental basis for action by a court of bankruptcy, first articulated by this Court almost 140 years ago, is jurisdiction over the property of the debtor. *Shawhan v. Wheritt*, 48 U.S. (7 How.) 627, 643 (1849). The purpose of bankruptcy law is to place property of the debtor under control of a court, e.g., *Straton v. New*, 283 U.S. 318, 320-21 (1931), and to convert that property to cash for distribution to creditors. E.g., *Williams v. United States Fidelity & Guaranty Co.*, 236 U.S. 549, 554 (1915).

** In *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 204 n.8 (1983), the Court held that the estate included property seized by a secured party prior to the filing, because ownership (title) still resided in the debtor, even if the market value of the property may have been less than the lien. This Court rejected the notion that Section 541(a) limited jurisdiction only to the debtor’s interest, rather than the entire property in which the debtor had an interest.

“Section 541(a)(1) speaks in terms of the debtor’s ‘interests . . . in property,’ rather than property in which the debtor has an interest, but this choice of language was not meant to limit the expansive scope of the section.” *Id.* at 204 n.8.

This concept is routinely applied. See, e.g., U.S.C. § 363 (h), (i), (j).

*** The breadth of the definition of “property” contained in Section 541(a) of the Bankruptcy Code was emphasized by this Court in *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 204-05 & nn.8-10 (1983).

is no conflict that insurance policies in general, and liability insurance policies in particular, are "property" of the debtor,* and indeed both the Second Circuit and the Fifth Circuit have ruled that these very policies are property of respondent's estate.** There is no conflict that a bankruptcy court may dispose of property in which the debtor has an interest and transfer any asserted interest of a non-debtor from the property to the cash proceeds of the disposition.*** Finally, there is no conflict that a bankruptcy court has authority to enforce such an order by injunctive means.****

* This Court in *Burlingham v. Crouse*, 228 U.S. 459, 471 (1913), and numerous other courts, e.g., *In re Pearl-Wick Corp.*, 15 B.R. 143, 148 (Bankr. S.D.N.Y. 1981), *aff'd*, 26 B.R. 604 (S.D.N.Y. 1982), *aff'd*, 697 F.2d 295 (2d Cir. 1982), have held insurance policies issued to the debtor to be property of the estate. All courts of appeals agree that product liability policies issued to a debtor are property of the estate. See *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 1001 (4th Cir.), *cert. denied*, 107 S. Ct. 251 (1986); *In re Davis*, 730 F.2d 176, 184 (5th Cir. 1984).

** See Appendix D-6 and *In re Davis*, 730 F.2d 176, 184 (5th Cir. 1984).

*** This principle was articulated by this Court over 100 years ago in *Ray v. Norseworthy*, 90 U.S. (23 Wall.) 128, 134-35 (1875). This authority is "granted by implication" in every bankruptcy codification, *Van Huffel v. Harkelrode*, 284 U.S. 225, 227 (1931), and is routinely applied by courts of appeals, see, e.g., *Farmers Bank v. Julian*, 383 F.2d 314, 322 (8th Cir.), *cert. denied*, 389 U.S. 1021 (1967); *Rubenstein v. Nourse*, 70 F.2d 482, 484 (8th Cir. 1934); *Fierman v. Seward Nat'l Bank*, 37 F.2d 11, 13 (2d Cir. 1930).

**** E.g., *In re Abraham*, 421 F.2d 226, 227-28 (5th Cir. 1970); *In re Wiltse Bros.*, 361 F.2d 295, 299 (6th Cir. 1966); *Gotkin v. Korn*, 182 F.2d 380, 382 (D.C. Cir. 1950); *Chauncey v. Dyke Bros.*, 119 F. 1, 3 (8th Cir. 1902).

The uniform agreement among courts of appeals on the principles articulated and applied by the Second Circuit shows that petitioner has not established the basic prerequisite for further review by this Court. Petitioner attempts to avoid the reach of Section 541 and the established case law that liability insurance policies are "property" of the estate by asserting that its "interests" in the insurance policies are somehow separate from and unrelated to the respondent's interest. This factual contention, however, was rejected by the courts below as unsupported by the record, and presents no issue worthy of review. Moreover, even if petitioner's asserted interest in respondent's policies were "separable," because the bankruptcy court has jurisdiction over the whole property (the policies) by virtue of the undisputed fact that the debtor has title, possession and interests in the policies, that court necessarily has jurisdiction over any asserted, third-party interests in the property.* The failure of the petition to address either the explicit criteria required by Rule 17 or the actual reasoning of, and the numerous, uniform authorities relied upon by, the court of appeals is a tacit but telling concession that review by certiorari is utterly inappropriate.

* Were this not the case, any third party could frustrate a reorganization simply by asserting that it had a claim against property, which under petitioner's view would divest the bankruptcy court of jurisdiction over a portion of the property. It is precisely because of petitioner's ability to significantly affect the debtor's estate via such direct claims that the courts below rejected as unsupported by the record petitioner's contention that its "interests were 'too remote' from the debtors' to come within the jurisdiction of the bankruptcy court." See Appendix D-6 — D-7.

Petitioner's attempt to invoke principles not involved in this case further demonstrates the impropriety of review. The argument that a guarantor's obligation to a creditor cannot be "discharged" by a plan of reorganization (Pet. at 11-13) is irrelevant. As the court of appeals wrote, the order is not a "discharge in bankruptcy." See Appendix D-5. Rather, any rights petitioner might have in the policies, which rights are totally derivative of respondent's rights as the named insured, are merely channeled from the policies to the \$770 million *res*. Petitioner's further extended argument that review should be granted because of the supposedly "erroneous" factual determinations and "erroneous" factual applications below (Pet. at 17-20) ignores the repeated admonition that this Court does not sit to review such matters. Finally, even the issue as petitioner defines it presents no immediate issue of national significance even arguably necessitating review. Petitioner speculates that it is "likely" that this decision may become a "blueprint" and that the "danger" is that it may "be repeated in numerous . . . cases to follow." (Pet. at 10, 24-25). Such rank conjecture that the "question" might recur shows that review is inappropriate.

The decision of the court of appeals applied long-established, codified principles of bankruptcy law. These principles - the essential authority of a bankruptcy court over property and the operation of that authority - are, as the Second Circuit wrote, "fundamental" to our bankruptcy system. The petition should be denied because review is unnecessary and inappropriate where, as here, the reasoning and the result are correct. In addition to the reasons set forth by the court of appeals, the following support the determination.

State law has not, as petitioner now contends, been "displaced." Federal law determines the scope of the authority of

a federal bankruptcy court to dispose of property in which the debtor has some interest in a federal reorganization proceeding.* Federal law determines whether a bankruptcy court has authority to dispose of property of a debtor free of the claimed interest of a non-debtor, with the latter's asserted interest being channeled from the property to the proceeds. However, whether the non-debtor in fact and in law has an interest in the proceeds, and the amount thereof, is determined by state law. This issue was not addressed by the court of appeals because it was unnecessary to do so. Petitioner has never attempted to assert its claimed rights against the \$770 million *res*, as the orders of the bankruptcy court specifically permit. When and if petitioner makes such a claim, a hearing would be held and appropriate state law would be applied.** Petitioner's "state law" contention (Pet. at 22-23) is, like its "discharge" assertion, a non-issue.

* See, e.g., 28 U.S.C. § 1334(d); 11 U.S.C. §§ 541, 363 (h), (i), (j).

** To establish that it had "rights" under any primary policy and therefore to a portion of the \$770 million *res*, petitioner would have to show at least (1) that there was a vendor endorsement, (2) that the claim against petitioner fell within both the endorsement and the underlying insuring agreement, (3) that no exclusions applied, (4) that the underlying claim triggered the policy, and (5) that the aggregate policy limits had not been exhausted. Moreover, petitioner, which has its own insurance, would be confronted with the "other insurance" provision in respondent's policies, even if it were a proper party to assert the rights (because if MacArthur's own insurers have paid, as seems to be the case, they are subrogated to MacArthur's "rights"). With respect to excess policies (and practically all the policies settled are excess policies), petitioner would have to show the foregoing where the excess policies "followed form"; where they did not, petitioner would have to show some other basis for coverage in the policy language. It is little wonder that the bankruptcy court termed petitioner's assertion of "rights" under the policies "highly speculative." See Appendix D-4.

A fundamental policy of the bankruptcy laws is to maximize values for creditors. That policy is advanced by permitting the sale of property in which the debtor has *an* interest, with any asserted interest of a non-debtor claimant channeled to and satisfied from the proceeds. All parties are protected: the transferee will pay the most for unquestioned "ownership" of the property; the non-debtor claimant has any valid claim paid first from the proceeds; the estate and its creditors receive the maximum net. Petitioner would reverse this goal and prevent bankruptcy courts from maximizing values and reducing uncertainty for all concerned.

CONCLUSION

The petition does not meet the criteria set forth in Rule 17 or prior decisions of this Court for the issuance of the writ. There is no institutional reason or justification for further review by this Court. The petition should be denied.

Dated: New York, New York
July 20, 1988

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